Supreme Court, U.S.
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No. 86-270

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

SAN FRANCISCO ARTS & ATHLETICS, INC.
and THOMAS F. WADDELL, M.D.,
Petitioners,

v.

UNITED STATES OLYMPIC COMMITTEE
and INTERNATIONAL OLYMPIC COMMITTEE,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

JOINT APPENDIX III

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PETITION FOR CERTIORARI FILED AUGUST 19, 1986
CERTIORARI GRANTED OCTOBER 20, 1986

1277

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[EXHIBIT A TO MILLER AFFIDAVIT]
[See *ante* p. 33]

[LOGO WITH 5 RINGS]
Olympic House:

UNITED STATES OLYMPIC COMMITTEE
1750 East Boulder Street,
Colorado Springs, Colorado 80909
Tel. (303) 622-5551 Telex 45 2424
Cable "AMOLYMPIC CSP"

IX Pan American Games,
Caracas, Venezuela,
August 20-September 3, 1983

XIV Olympic Winter Games,
Serejevo, Yugoslavia,
February 7-19, 1984

Games of the XXIII Olympiad,
Los Angeles, California, U.S.A.,
July 25-August 12, 1984

F. DON MILLER
Executive Director

Gay Olympic Games
P.O. Box 14874
San Francisco, CA 94114

December 23, 1981

To Whom It May Concern:

The United States Olympic Committee has become aware of your organization known as the Gay Olympic Games which is promoting a Gay Olympic Games function on August 28, 1982. We also understand that you have initiated a publication entitled "Gay Olympics" as well as various related activities and fund-raising events.

Please be advised that such activity and usage of the word "Olympic" with relationship to such activities is prohibited by Public Law 95-606, the Amateur Sports Act

of 1978, a copy of which is enclosed. The United States Olympic Committee has also long held trademark rights to the usage of the word "Olympic" with regard to such activities. No person or organization may use the word "Olympic" with respect to functions which are not sanctioned by the United States Olympic Committee, and this most particularly applies to any athletic competitions.

In addition, the United States Olympic Committee is entitled, according to its legal remedies, to recover any and all funds which are solicited and acquired by virtue of the usage of Olympic terminology with respect to athletic competitions in which the word "Olympic" is not sanctioned by the United States Olympic Committee.

While it is understandable that organizations such as yours may innocently use terminology which involves the use of the word "Olympic", the United States Olympic Committee takes exception to such usage. We must ask you to terminate immediately any reference to the word "Olympic" with respect to the activities which have been discussed herein and refrain from using such terminology in the future.

Please send your written acknowledgement of this request within ten (10) days of receipt of this letter. Thank you for your cooperation in this matter.

Sincerely,

F. DON MILLER

FDM/ghm
Enc.
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Contributions Are Deductible for Income Tax Purposes

[EXHIBIT B TO MILLER AFFIDAVIT]
[See *ante* p. 33]

GAY OLYMPIC GAMES
P.O. Box 14874, San Francisco, California 94114, U.S.A.

Dec. 26, 1981

[THREE-RING LOGO]

Col. Don Miller
1750 East Boulder St.
Colorado Springs, Colo. 80909

Dear Col. Miller:

When we originally filed our articles of incorporation in Sacramento, Calif., we were told we could not use the name "Olympic" in our corporate name or logo. We thus became "San Francisco Arts and Athletics". We are sponsoring two events as described in the enclosed material.

We recently heard indirectly that we now could not even call our athletic contests the "Gay OLYMPIC Games", at least not without permission from the United State Olympic Committee.

I had a conversation with Mike Moran and explained that we were only aware of the word "Olympic" as a generic term, referring to an event that pre-dated Christ. I mentioned that we were also aware that there were "Armchair Olympics", "Special Olympics", "Handicapped Olympics", "Police Olympics" (being held in this same city next summer), even "Dog Olympics". There are also 33 listings in the San Francisco phone book using the term Olympic.

Col. Miller, these Games are very specialized indeed. Our outreach and emphasis differs widely from the traditional Olympic Games in that we, openly gay people around the world, are struggling to produce an image that more closely resembles the facts rather than some

lidibinous stereotype generated over decades of misunderstanding and intolerance. We need to demonstrate our similarities as fully vested citizens.

Some things are changing. Homosexuality is now not something that needs to be "understood", any more than ones tastes in food can be understood, it is simply something that needs to be accepted.

We feel strongly that the term "Olympic" is integral to what we intend to achieve. Our eight days of cultural events and sport will be a testament to our character and our wholesomeness; arts and athletics within the ancient Olympic format.

If permission, according to law, is a necessity; then we hereby apply for such, and assume that you will be fair in view of the precedents already set. We, in turn, will demonstrate our graditude in ample ways as the 1984 Olympic Games in Los Angeles draw closer.

Best wishes for 1982.

Respectfully yours,

/s/ Thomas Waddell
THOMAS F. WADDELL, M.D.
Chairman
San Francisco Arts and
Athletics

cc: Hon. Alan Cranston
Gov. Jerry Brown
Mayor Dianne Feinstein
Board of Supervisors, City of
San Francisco

[EXHIBIT C TO MILLER AFFIDAVIT]

[Exhibit A to Defendant's Responses to Requests for Admissions]

[See *ante* pp. 33, 219]

[Sketch of Three Runners Omitted in Printing]

GAY
OLYMPIC
GAMES

[THREE-RING LOGO]

Gay Olympic Games
P.O. Box 14874
San Francisco, CA
94114
415/861-8282

[THREE-RING LOGO]

THE GAY OLYMPIC GAMES
AN OVERVIEW

Why a GAY Olympic Games?

Gay men and women who live openly in society have created a viable sub-culture in cities throughout the world. Up until now it has been characterized by the traditional media as an exclusive sexual lifestyle. That may have been the basis of our liberation and the genesis of our sub-culture, but it is after all only a superficial inspection of the depth of our character. We, as gay persons aspire to many of the goals and activities of traditional society, including an active participation in organized sport. Here then, is an opportunity to expand our image and educate the general public on the vitality, variety, and versatility of the Gay community, through the promotion of sports events within the framework of Olympic style competition. It will also serve to unite our athletic organizations nationally and internationally, to say nothing of the joy of our own Olympics.

Who can compete?

There are no restrictions for competing in the Gay Olympic Games other than the requirements put forth by each Olympic Sport Committee for their individual sport. No one will be denied the opportunity on the basis of age, gender, color, creed, or sexual preference.

Representation is on a city basis. It is true that many gay men and women move to large urban centers and so we are permitting teams and individuals to compete for their city of origin regardless of where they are now living. This means that an athlete living in Houston may represent his/her home town in Lubbock if in fact he/she could not make the Houston team in that sport. A mail-

ing address in the city to be represented is the only requirement.

How do the athletes get to San Francisco?

Begin organizing teams now and develop a fund-raising campaign. Transportation to San Francisco is up to the participants. Once arrived, our Olympic Committee will host your stay with exception of meals (discount ticket for athletes will be issued). We are attempting to work out special group rates with EASTERN AIRLINES, which will also provide an information booth at San Francisco Airport (SFO).

What sports are planned?

All of the following sports have corresponding men's and women's events: track & field, basketball, volleyball, swimming, cycling, tennis, marathon, bowling, billiards, physique, powerlifting, soccer, and golf. For men only, there will be wrestling. For women only, there will be rugby.

How are the Games financed?

By local and national fundraising, registration fees, and donations.

Best wishes,

/s/ Tom Waddell
TOM WADDELL, Chairman
GOG Committee

GAY OLYMPIC GAMES

P.O. Box 14874 San Francisco, California 94114 U.S.A.

[THREE-RING LOGO]

PRESS RELEASE

Gay Olympic Games* San Francisco* 82

The Gay Olympic Games Organizing Committee in San Francisco is proud to announce the Gay Olympic Games,* San Francisco,* 82. Opening Day Ceremonies which will rival the traditional Olympic Games in pageantry will begin at 1 pm on August 28, 1982 at Kezar Stadium. The Games will end with Closing Ceremonies on September 5.

More than 27 countries will send over 4,000 gay men and women athletes to participate in the Games. Each team will march in uniform behind the flags of their respective cities. Except where noted, there will be corresponding events for men and women in 18 different sports. These are: BASKETBALL, BILLIARDS, BOWLING, BOXING (MEN), CYCLING, GOLF, MARATHON, PHYSIQUE, POWERLIFTING (WOMEN), RUGBY (WOMEN), SOCCER, SOFTBALL, SWIMMING AND DIVING, TENNIS, TRACK AND FIELD,

---

* Enclosed is a sketch of the first Gay Olympic Games Poster. The original is in 3 colors and 14" x 22". There is a limited edition of 2,000 available for purchase ($4.00).

There is also a Games Package consisting of one tee shirt, one bumper sticker, and one button, all with the Games logo emblazoned. ($10.00)

Write to:

Gay Olympic Games
Box 14874
San Francisco, CA 94114
(415) 861-8282

VOLLEYBALL, WEIGHTLIFTING, AND WRESTLING (MEN).

The Games will take place in various facilities in the city over an 8 day period. Athletes will be housed in private homes and transportation will be provided to all competitive sites.

The Gay Olympic Committee will sponsor a simultaneous week of cultural activities which has been titled "The International Festival of Gay Artists". This event will consist of a city-wide festival of singing, music, dance, theater, art and film.

The entire week of athletic and cultural activities is the first of its kind in history. The athletic competition is best described as "serious fun" and though outstanding performances are expected in each sport, the major emphasis is on participation.

There will be an original Gay Olympic Anthem composed for the Games and an original Gay Olympic medal struck in gold, silver, and bronze for the top three place finishers in each event. A torch will be lighted at Stonewall in New York City and carried by runners cross-country to arrive at Kezar Stadium for the Opening Day Ceremonies.

We invite you to become involved in helping us to expand the image and character of gay men and women everywhere. The success of these Games can effectively help balance the false perspective often accorded to gay people. We participate in the same ideals as other citizens. We work hard for ourselves and for others. We need to demonstrate our similarities.

We are still seeking respect from others, but this is not something that automatically comes from merely being gay; history has taught us that often enough. Respect comes from performance and we are ready to perform.

Gay Olympic Games, San Francisco° 82 will make us all proud. Please help us make it possible. Help us get the word out! Thank you.

Yours truly,

/s/ Tom Waddell
THOMAS WADDELL, M.D.
Chairman
Gay Olympic Games

GAY OLYMPIC GAMES

[THREE-RING LOGO]

GAY OLYMPICS
NEWSLETTER

VOL. 1. NO. 2

DECEMBER, 1981

Opening Day Ceremonies

On August 28, 1982, at Kezar Stadium in San Francisco, at 1:00 pm, The Gay Olympic Games will officially begin. We are planning to make these ceremonies a celebration for gay men and women from all over the world and from hundreds of American cities. Kezar Stadium's 63,000 capacity sounds just right!

There will be a dias for our honored guests. We have invited all of the members of the San Francisco Board of Supervisors, Mayor Diane Feinstein, State Senator Milton Marks, and Speaker of the California Assembly, Willie L. Brown, Jr. We are anticipating that Mayor Feinstein will officially open the Gay Olympic Games. Supervisors Britt, Dolsen, Silver and Molinari have already accepted our invitation.

The athletes will march into the stadium behind their respective city flags and take their place on the field. There will be a Flag Corps consisting of 250-300 gay men and women who will perform flag routines with Chinese banners and flags. The field will be filled with color.

A runner will enter the stadium with the Gay Olympic Torch; said torch having been lit at Stonewall in New York City and run across the United States to San Francisco. The runner will proceed to the top of Kezar Stadium and officially light our Gay Olympic Flame. This will coincide with the very first performance of an original Gay Olympic Games Anthem composed by Alex Rasch.

There will be music from various performers. We will have the San Francisco Gay Marching Band there and are inviting bands from other cities.

Wally Rutherford has volunteered to produce the entire extravaganza. His wonderful talents should ensure a spectacular event. He will be working with Hydie Downard who is in charge of Opening Day Ceremonies. Please direct any help or suggestions to Hydie. P.O. Box 14874, S.F. 94114 or call The Olympic Office: (415) 861-8282.

• • • •

International Report

Thus far we have corresponded with individual athletes and teams from England, Holland, Germany, France, Ireland, Northern Ireland, Scotland, Wales, Italy, Lichtenstein, Sweden, Denmark, Finland, Brazil, Venezuela, Mexico, Argentina, Hong Kong, Japan, Australia and New Zealand.

A group of language students from the University of California at Berkeley have offered to translate our language into other languages and to act as interpreters when the overseas athletes arrive.

International (and national) contingents should begin planning their uniforms, both marching and competitive. We would like all cities to present their teams in matching uniforms for all the ceremonies and festivities. Competitive uniforms must conform to the requirements of each sport.

In our information package, due out in December, there will be questions regarding color and types of uniforms as well as a description of your City Flag. Only the name and emblem of your city will be permitted on any flags or uniforms. Please, no slogans, advertising or graffitti.

Here in San Francisco we are attempting to have our uniforms donated to our team members. Preliminary plans are to have the women's teams in white blazers, blue slacks, blue shoes and caps. The men's teams will

wear blue blazers. Both teams will have pale blue shirts. Each blazer will have the Olympic emblem over the left breast.

The big event is drawing near. Call or write to us for any details . . . Best wishes for the Holidays.

• • • •

Committee Heads

Basketball	*Glen Mercier*
Billiards	*Kitty Stevens (w)* *Gene Miller (m)*
Bowling	*Sara Lewenstein (w)* *Mel Garcia (m)*
Boxing	*Rick Meyers*
Cycling	*Brandy Moore* *Jerry Ford*
Golf	open
Marathon	*Bud Budlong*
Physique	*Jim Bridges*
Powerlifting	*Mitchel Tanner (w)*
Rugby	open (w)
Soccer	*Ken Bunch* *Josh Perskey*
Softball	*Mark Brown*
Swimming	*Jill Ramsay*
Tennis	*Bonnie Whythe (w)* *Les Balmain (m)*
Track & Field	*Toni Kaska (w)* *Tom Waddell (m)*
Volleyball	*Kathy Argo (w)* *Jim Bridges (m)*
Wrestling	*Robin Chambers (m)* *Don Jung*
Weightlifting	open (m)
Flag Corps	*Mel Garcia*

Housing	*Derrill Loberg*
Newsletter	*Brenda Young*
Volunteers	*David Warda*
Computer	*Robert Hawk*
Cultural Week	*Morgan Costin*

Opening Day Ceremonies
Hydie Downard
Telephone:
(415) 861-8282

Write:

Gay Olympic Headquarters
P.O. Box 14874
San Francisco CA 94114

Publicity

In the month of December, along with this issue of the Newsletter, a National Press Release was sent to 300 gay men and women publications and gay radio programs in the United States and Canada. Also, the first Olympic poster, advertising the games, has been sent to gay bars and organizations (men & women) across the United States and Canada.

Housing the Athletes

Four to five thousand athletes from twenty-eight different countries will arrive in San Francisco for the '82 Games. The Gay Olympic Games Housing Committee will be responsible for the accommodations of each of these athletes.

• • • •

Olympic T-Shirt Package

The T-Shirt Package includes an official Olympic T-Shirt (S, M, L, or XL), button and bumper sticker. The price is only $10.00 and includes postage and handling.

• • • •

FUNDRAISERS

Money is always needed to keep the flow of events happening—the newsletter, press releases, national poster advertising, office rental and many other day-to-day needs. We need your help. If you or any of your friends wish to hold a fundraiser or contribute in any way (no amount is too small), we, the Olympic Committee, would be most appreciative. Remember, the success of the Gay Olympic Games will benefit Gay people everywhere and will help to establish a close-knit world community. We must all participate in whatever way we can.

• • • •

Olympic Headquarters

Yes, we now have an office to work out of. It is located at:

597 Castro Street
(at 19th Street)
San Francisco
(415) 861-8282

Our mailing address remains the same:
Gay Olympic Games '82
P.O. Box 14874
San Francisco, CA 94114 USA

Flag Corps

The first practice session of the Olympic Flag Corps was held on Saturday, November 14th. Forty men and women showed up of which 10 were new signees. The Corps now has 100 members and still needs 200 more members to reach its goal of 300. The practice session was for two hours and basically marching was stressed. A good time was had by all and everyone is eager to get together again. Our next practice is January 12, at Kezar Pavilion (Stanyan and Waller Streets). Anyone interested in joining may do so between 7:30-8:00

pm, on Tuesday, January 12. Practice will start promptly at 8 pm, or call the Gay Olympic Headquarters (at 415-861-8282) for further information. The Corps will march in the Gay Freedom Day parade in June and perform at the opening ceremony of the Gay Olympic Games, Saturday, August 28, 1982, and the closing ceremony, Sunday, September 5, 1982. There is a large parking lot next to Kezar Pavilion that you may use to enter the building through the side door. Tennis shoes must be worn on the Pavilion floor.

Olympic Poster

The First Gay Olympic Games Poster is now available. This limited edition poster designed by *Robert '81* can be purchased at our office at 597 Castro Street. The initial introductory price is $4.00. For postage and mail handling, an additional $1.00 is required.

OFFICIAL PUBLICATION OF
SAN FRANCISCO ARTS &
ATHLETICS, INC.
BRENDA K. YOUNG, EDITOR
P.O. BOX 14874
SAN FRANCISCO, CA 94114

[EXHIBIT D TO MILLER AFFIDAVIT]
[See *ante* p. 34]

[United States Olympic Committee Letterhead]

January 6, 1982

Thomas F. Waddell, M.D.
Chairman
San Francisco Arts and Athletics
P.O. Box 14874
San Francisco, CA 94114

Re: *Gay Olympic Games*

Dear Mr. Waddell:

I am in receipt of your letter of December 26, 1981 regarding the "Gay Olympic Games." You should be advised that I have previously sent a letter to that organization indicating that the United States Olympic Committee takes exception to their usage of Olympic terminology with respect to the proposed activities. I am enclosing a copy of that letter for your information.

As that letter indicates, Public Law 95-606, a copy of which is enclosed, gives to the United States Olympic Committee the sole and exclusive right to make use of Olympic terminology in all respects, but most particuarly with respect to any athletic or purported athletic endeavor. We have also acquired trademark rights through federal registration with respect to the use of such terminology.

The position of the United States Olympic Committee with regard to the "Gay Olympic Games" has nothing to do with the issue of homosexuality. Rather, it has to do with the rights vested in the United States Olympic Committee through Public Law, trademark rights and the charge of the International Olympic Committee to protect

the usage of Olympic terminology in the best interests of the Olympic Games.

You have made mention of a number of "Olympic activities" and you should be advised that with respect to almost all Olympic activities and Olympic usage, the United States Olympic Committee takes exception and opposes such usage. There are a few exceptions. Public Law 95-606 charges the United States Olympic Committee with the responsibility of developing programs and participating in programs for the handicapped. In this respect we actively work with the handicapped to develop such programs, and therefore, do not take exception, and, in fact, have encouraged the development of special programs in this area.

The designation of "Olympic Games" by its very nature indicates an activity which occurs once every four years and involves athletic competition between the youth of the world. To allow your organization to make use of such terminology would dilute the meaning and significance of this event, and, I therefore cannot grant authorization for such usage.

Thank you for your inquiry in this matter.

Sincerely,

F. DON MILLER

FDM/ghm
Enc.

[EXHIBIT E TO MILLER AFFIDAVIT]

[See *ante* p. 34]

GAY ——— GAMES

P.O. Box 14874, San Francisco, California 94114, U.S.A.

Jan. 18, 1982

[THREE-RING LOGO]

Col. Don Miller, Director
United States Olympic Committee
1750 East Boulder Street
Colorado Springs, Colorado 80909

Dear Col. Miller:

As per your request and according to the letter of Public Law 95-606-Nov. 8, 1978, we have discontinued the use of the term "Olympic" to describe our event.

We have, as an interim measure, blocked out the term "Olympic" and in all subsequent printed materials will substitute the term "Athletic".

Best wishes for a successful campaign for the 1984 Olympic Games in Los Angeles.

Sincerely,

/s/ Tom Waddell
THOMAS F. WADDELL, M.D.
Chairman

[EXHIBIT F TO MILLER AFFIDAVIT]

[See *ante* p. 34]

[United States Olympic Committee Letterhead]

January 27, 1982

Thomas F. Waddell, M.D.
Chairman
Gay Athletic Games
P.O. Box 14874
San Francisco, CA 94114

Dear Tom:

I am in receipt of your letter indicating that the organization which you represent in San Francisco will not use the terminology, "Gay Olympic Games," and in its place will substitute the terminology, "Gay Athletic Games." I know that requests such as this one may present some difficulty to your organization, but I am sure that in the long run the activity will be as successful as the work that the organizers put into it.

I appreciate your response to my request and the position which you have taken, and I wish you well in your venture.

With all good wishes, I remain,

Sincerely,

/s/ Don
F. DON MILLER

FDM/ghm

[EXHIBIT G TO MILLER AFFIDAVIT]

[See *ante* p. 35]

Jan. 26, 1982

GAY ——— GAMES

[THREE-RING LOGO]

To: F. Don Miller, Director
UNITED STATES OLYMPIC COMMITTEE
1750 East Boulder Street
Colorado Springs, Colo. 80909

Dear Mr. Miller:

Greetings. Since I last wrote to you on January 18, 1982, on behalf of San Francisco Arts and Athletics, Inc. and the "Gay Olympics" of 1982, of which I am Chairman, I have been informed by legal counsel that it appears our organization *does* have a legal right to use the word "Olympic", in that (1) it *does not* appear that our nonprofit corporation has violated or is presently violating section 110(a) of Public Law 95-606, by its sponsorship and other activities in support of the "Gay Olympic Games" of 1982, because the use of the word "Olympic" in conjunction with this event *does not* tend to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the U.S. Olympic Corporation, Committee or any of their Olympic activities, and in that (2) it appears that the use of the term "Olympic" by our nonprofit corporation, its sponsors, members and others in conjunction with the "Gay Olympic Games", scheduled to be held in San Francisco, California, on August 28-September 5, 1982 is protected by the guarantees of free speech and association of the First Amendment, which expressly prohibits Congress from making any law(s) abridging those freedoms of the people of this nation.

I am also informed by legal counsel that it appears that the U.S. Olympic Committee is acting to discriminate against our nonprofit corporation, its supporters and others associated with the "Gay Olympic Games", by refusing to permit use of the term "Olympic" in this connection, and by your position stated in your letter of January 6, 1982 that "(T)o allow (our) organization to make use of such terminology would dilute the meaning and significance of (the U.S. Olympics and the World Olympics)." I am informed that such discrimination by yourself as Director of the U.S. Olympic Committee appears directly to violate the guarantee of equal protection of the laws of the U.S. Constitution, incorporated by the Fifth Amendment to govern conduct of our federal government and its delegates.

Until this controversy can be definitively resolved, we of San Francisco Arts and Athletics, Inc. are making every reasonable effort temporarily to suspend and avoid use of the term "Olympic" in our non-profit organization's activities to promote and plan the Games set for August 28-September 5, 1982. We are doing so *not* because we have doubts as to our organization's right to use the term "Olympic", but rather to provide a brief "moratorium" period in this controversy to facilitate informal resolution between these organizations, if possible. Practically speaking, however, this temporary avoidance of the use of the term "Olympic" in conjunction with the "Gay Olympic Games" is causing our organization demonstrable injuries, including but not limited to an inability to distribute literature and other items, to fully promote the "Gay Olympic Games" and so forth. Constitutionally more significant, our temporary non-use of the term "Olympic" exacts a direct daily and immeasurable cost in terms of the First Amendment freedoms of speech and association of those persons involved in our organization and in the "Gay Olympic Games".

A definitive resolution of this controversy about our use of the term "Olympic" is *urgently needed* by us. Any

resolution that precludes our use of the term "Olympic" will aggravate the injuries described above. I respectfully ask you to take all necessary action to assure permission of our organization to use the term "Olympic" in conjunction with the "Gay Olympic Games" of 1982, and to assure us that no legal action by the U.S. Olympic Corporation, its Committee or any agent thereof will be taken against us for our non-profit and constitutionally protected use of the term "Olympic" in this connection.

I am informed by legal counsel that *if* this controversy cannot be promptly resolved, on an amicable basis, between the concerned organizations, and to clarify our legal status and prevent further constitutional harms, our organization is advised to seek formal resolution of this controversy by the filing and expedition of a federal civil action seeking all necessary declaratory, injunctive and other relief to finally resolve this controversy, and to protect and implement the statutory and constitutional rights of San Francisco Arts and Athletics, Inc., participants in and contributors and sponsors of the "Gay Olympic Games" and all other affected persons. The governing body of our corporation by resolution has authorized all litigation necessary to such resolution.

In the belief that an amicable resolution of this controversy is preferable, especially to advance the rapport and respect that should exist between the persons and groups involved, and without in any way intending to foreclose any formal legal recourse that may prove necessary, I will await your written response to this letter, which I will expect to receive not later than 5 o'clock p.m. on Monday, February 1, 1982, at; P.O. Box 14874, San Francisco, California, 94114.

In formulating your response to this letter, I respectfully urge you to consider (1.) that the term "Olympic" is a generic one, of deep historic origin, that belongs to *all* people and that is widely used by many and diverse groups of people, to identify and celebrate a variety of

activities; (2.) that San Francisco Arts and Athletics, Inc.'s use of the term "Olympic" cannot fairly and accurately be characterized as violating the purposes or terms of Section 110 of Public Law 95-606, and that your conclusion to the contrary in your letter of December 23, 1981, "To Whom It May Concern", is factually incorrect and legally unsupported; (3.) that the position of our corporation in conjunction with the "Gay Olympic Games" of 1982 is closely analogous to that of the plaintiff in *S.T.O.P. v. U.S. Olympic Committee*, Civil Action # 4691 (D.N.Y.), decided in favor of S.T.O.P. by U.S. District Judge John Canella on February 5, 1980; (4.) that our use of the term "Olympic" is non-commercial, and that our organization is operated on a non-profit basis.

I will look forward to receipt of your written response to this letter, indicating whether the U.S. Olympic Committee agrees, upon review of your earlier statements and conclusions in light of the facts and reasons set forth in this letter, that San Francisco Arts and Athletics, Inc.'s activities in conjunction with the "Gay Olympic Games" of 1982 are *not* in violation of section 110 of Public Law 95-606, and that our organization is permitted to use the term "Olympic" in those activities, as a matter of constitutional right, safeguarded in the guarantees of free speech and association of the First Amendment to the U.S. Constitution.

The name and address of legal counsel providing the advice and opinions that I have described above, to our organization, is Mary C. Dunlap, 425 Staples Avenue, San Francisco, CA 94112.

Sincerely,

/s/ Thomas F. Waddell, M.D.
THOMAS F. WADDELL, M.D.
Chairman

[EXHIBIT H TO MILLER AFFIDAVIT]

[See *ante* p. 35]

[United States Olympic Committee Letterhead]

February 2, 1982

Thomas F. Waddell, M.D.
San Francisco Arts and Athletics, Inc.
P. O. Box 14874
San Francisco, California 94114

Re: *Our File No. 29642/00405*

Dear Dr. Waddell:

Your letter of January 26, 1982 was not delivered to the United States Olympic Committee until last Friday afternoon, January 29, when it was referred to me for response.

In this letter you ask the United States Olympic Commitee to authorize the San Francisco Arts and Athletics, Inc. to use "Gay Olympic Games" for an international athletic event which it intends to sponsor in 1982. As legal counsel for the United States Olympic Committee I am disturbed by your apparent repudiation of your prior agreement resolving this matter. That agreement provided that your organization would discontinue "the use of the term 'Olympic' to describe our event", in consideration of the Olympic Committee forebearing to bring legal action to enforce its rights, as confirmed by the Executive Director on December 23, 1981 and your acknowledgement of January 18, 1982.

Please be advised that the United States Olympic Committee intends to abide by this agreement, as evidenced by our response of January 27, 1982. Accord-

ingly, we must insist that San Francisco Arts and Athletics, Inc. also adhere to this agreement.

Sincerely,

/s/ RICHARD G. KLINE

RGK:jlm

cc: Ms. Mary C. Dunlap
United States Olympic Committee

[EXHIBIT C TO KLINE DECLARATION]

[See *ante* p. 30]

MARY C. DUNLAP

Attorney at Law
(415) 587-8320

425 Staples Avenue
San Francisco, Ca 94112

12 February 1982

To: RICHARD G. KLINE
Counselor
1819 H Street N.W.
Washington D.C. 20006

Re: San Francisco Arts & Athletics Inc.'s "Gay Olympic Games"

Dear Mr. Kline,

Greetings. I am legal counsel to San Francisco Arts & Athletics Inc. (below "SFA&A"), which is a non-profit corporation chartered in California, in the above-identified matter. I have read and considered your letter of February 2, 1982, to Dr. Thomas Waddell, and I must take serious issue with its contents.

There is *no* agreement, and there has at no prior time been any agreement, between my client (nor any representative or officer of my client) and U.S.O.C. (nor any representative of U.S.O.C.) for my client to discontinue use of the term "Olympic" in consideration for U.S.O.C.'s forebearing litigation against my client. Dr. Waddell's letter to Colonel Miller dated January 18, 1982 was written prior to Dr. Waddell's receipt of legal advice indicating to him and to others affected that (1.) it is very doubtful that SFA&A would be found to be violating Public Law 95-606, or any section thereof, in its terms and in light of Congress' intent in its enactment, and (2.) there are gross abridgements of the First Amend-

ment's guarantees of free speech and association to SFA&A's officers, members, and others involved in the "Gay Olympic Games", in the legal posture of U.S.O.C. that SFA&A and those associated with SFA&A may not use the word "Olympic", and (3.) it appears that U.S.O.C. and Colonel Miller and others, under color of federal law, have discriminated against and threaten to continue to discriminate against SFA&A in violation of the Fifth Amendment's guarantee of equal protection of the laws, by their treatment of SFA&A and Dr. Waddell and others associated with the "Gay Olympic Games", vis à vis the treatment accorded to other similarly situated individuals and groups. Moreover, as the letter from Dr. Waddell expressly recites, deletion of the word "Olympic" was an "interim measure", subject to legal advice being received from myself and others indicating that the U.S.O.C.'s "proclamation", that SFA&A was in violation of Public Law 95-606, appeared to be incorrect, and constitutionally ill-considered.

Dr. Waddell could not possibly have intended to "agree" to waive rights of his organization under Public Law 95-606, nor was he empowered to waive anyone's constitutional rights (there is no such thing!) when he sent the letter of January 18th, because he was unaware of the extent and meaning of those rights and of the primacy of the First Amendment in this situation, and because he had been affirmatively misinformed and threatened by the letters from Colonel Miller, containing categorical and unmeasured pronouncements as to the unlawfulness of SFA&A's use of the term "Olympic". Moreover, the letter of Dr. Waddell of January 18th does not mention nor imply that the statements made therein are offered in consideration of any foregoing of suit by U.S.O.C. Thus, there can be *no* agreement of the sort that you conjure in your letter to Dr. Waddell on February 2, 1982.

My client and its representatives continue to desire an amicable, out-of-court resolution of this controversy, if feasible. My client and its representatives, officers and others concerned do not intend to abandon their rights to use the term "Olympic", however. All SFA&A materials and properties containing the word "Olympic" could be asterisked * and labeled "not associated with the U.S. Olympic Committee" if your client desires; my client makes this proposal to accommodate, without any admission nor intent to admit any violation of any law, nor specifically to admit any confusing similarity. If your client finds this accommodation satisfactory, in terms of any claim that your client purports to have against my client, be so kind as to inform me of this fact by letter at your earliest opportunity. If this proposed accommodation is not satisfactory to your client, likewise please inform me of that fact in writing so that my client and I may take all necessary steps to protect the rights of those associated with SFA&A to hold and sponsor the "Gay Olympic Games of 1982", and to speak and associate freely in relation thereto, as assured to them by the Constitution of the United States, Amends. I and V. Thank you.

Best regards,

/s/ Mary C. Dunlap
MARY C. DUNLAP
Attorney for San Francisco
Arts & Athletics Inc.

[EXHIBIT D TO KLINE AFFIDAVIT]

[See *ante* p. 31]

[United States Olympic Committee letterhead]

February 22, 1982

Ms. Mary C. Dunlap
420 Staples Avenue
San Francisco, California 94112

Re: Gay Olympic Games
Our File No. 92642/00405

Dear Ms. Dunlap:

Your letter of February 12, 1982 contained several misconceptions regarding the enforceability of the agreement entered into between the United States Olympic Committee and Dr. Waddell on behalf of San Francisco Arts and Athletics, Inc.

First, I am not aware of any authority which holds, or even intimates, that a party is required to receive approval of an attorney before entering into a binding agreement, and I seriously doubt whether such an argument would be favorably considered by any court.

Second, the relative merits of a controversy are irrelevant once there has been an agreement which is predicated on a forbearance of action. For example, the United States Court of Appeals for the District of Columbia held in *Autera v. Robinson*, 419 F.2d 1197 at 1201 (D.C. Cir. 1969):

> "Of course, a valid settlement agreement, once reached, cannot be repudiated by the parties, and after a binding settlement agreement has been made, the actual merits of the settled controversy are without consequence."

Third, the U.S.O.C., United States Olympic Committee, although federally chartered, is not a federal agency within the meaning of the First or Fifth Amendments to the Constitution of the United States which was specifically addressed in *De Frantz v. United States Olympic Committee*, 492 F. Supp. 1181, 1194 (D.C.C. 1980). Consequently, the constitutional issues raised in this regard also are irrelevant.

Fourth, assertion of a federal statute can hardly be considered violative of public policy.

Finally, the only "interim measure" referred to by Dr. Waddell is the physical blocking out of the word "Olympic" on your client's stationery and other paraphernalia, in order to effectuate the agreement immediately and to minimize the impact on its activities. This reference followed an express and unqualified undertaking by your client on January 18, 1982 and "we have discontinued the use of the term 'Olympic' to describe our event."

The United States Olympic Committee considers that the issue of the use by your client of the term "Olympic" in connection with its proposed athletic games has been amicably resolved. Your offer to modify the pre-existing agreement to include a disclaimer is unacceptable.

Very truly yours,

RICHARD G. KLINE

RG:jlm

cc: United States Olympic Committee

[EXHIBIT I TO KINE DECLARATION]

[See *ante* p. 31]

UNITED STATES PATENT OFFICE

789,795
Registered May 18, 1965

PRINCIPAL REGISTER
Service Mark

Ser No 192536, filed May 1, 1964

OLYMPIC

United States Olympic Association (United States non-profit corporation), doing business as the United States Olympic Committee
57 Park Ave.
New York, N.Y.

For: SERVICES PROMOTING, PUBLICIZING, AND CONTROLLING THE PARTICIPATION OF THE UNITED STATES IN THE OLYMPIC AND PAN AMERICAN GAMES; REPRESENTING THE UNITED STATES BY SELECTING AND OBTAINING THE MOST COMPETENT AMATEUR REPRESENTATION FOR COMPETITIONS AND EVENTS OF THE OLYMPIC AND PAN AMERICAN GAMES; AND ORGANIZING THE OLYMPIC AND PAN AMERICAN GAMES WHEN CELEBRATED IN THE UNITED STATES, in CLASS 107.

First use 1896; in commerce 1896.

REGISTERED FOR A TERM OF 20 YEARS FROM May 18, 1965.

COMB. AFF. SEC 8 & 15

Certified to be a true copy of the registration, which is in full force and effect, with notations of all effective actions taken thereon, excluding transfers, as disclosed by the records of the United States Patent & Trademark Office.

/s/ [Illegible]
Commissioner of Patents
and Trademarks

[SEAL]

Attest:

Feb. 25, 1982
C. R. Hill,
Attesting Officer.

UNITED STATES PATENT OFFICE

968,566
Registered Sept. 18, 1973

PRINCIPAL REGISTER
Trademark
Service Mark
Collective Membership Mark

Ser. No. 381,518, filed Jan. 21, 1971

OLYMPIC

United States Olympic Committee (United States non-profit corporation)
57 Park Ave.
New York, N.Y. 10016

For: APPARATUS SOLD AS A UNIT FOR PLAYING A BOARD OR SIMILAR TYPE PARLOR GAME; EDUCATIONAL TOYS; REGULAR AND WARMUP UNIFORMS USED IN CONNECTION WITH TRACK AND FIELD GAMES; HELMETS; AND TRACK SHOES, in CLASS 22 (INT. CL. 28).

First use at least as early as 1960; in commerce since at least 1960.

For: JEWELRY, TIE CLIPS, LAPEL PINS, CUFF LINKS, MONEY CLIPS, CHARMS, MADE IN PART OF PRECIOUS AND SEMI-PRECIOUS METAL-WARE, in CLASS 28 (INT. CL. 14).

First use at least as early as 1932; in commerce since at least 1932.

For: GLASSWARE — NAMELY, TUMBLERS, BOWLS AND DISHES—in CLASS 33 (INT. CL. 21).

First use at least as early as 1964; in commerce since at least 1964.

For: WRITING PAPER, STATIONERY, NAPKINS AND SHEET PAPER, in CLASS 37 (INT. CL. 16).

First use at least as early as 1948; in commerce since at least 1948.

For: PRINTS AND PUBLICATIONS, INCLUDING PAMPHLETS, BOOKS, MANUALS, NEWSLETTERS, BROCHURES, PROGRAMS AND FILMS, in CLASS 38 (INT. CL. 16).

First use at least as early as 1948; in commerce since at least 1948.

For: SOUVENIRS, PINS, TROPHIES, PLAQUES, MEDALLIONS, MEDALS, BANNERS, PATCHES AND EMBLEMS, in CLASS 50 (INT. CLS. 14, 20, 24, and 26).

First use at least as early as 1932; in commerce since at least 1932.

For: ADVERTISEMENTS TO RAISE MONEY TO SUPPORT THE OLYMPIC GAMES, in CLASS 101 (INT. CL. 35).

First use at least as early as 1920; in commerce since at least 1920.

For: INDICATING MEMBERSHIP IN APPLICANT, in CLASS 200.

First use at least as early as 1932; in commerce since at least 1932.

Owner of Reg. No. 789,795.

REGISTERED FOR A TERM OF 20 YEARS FROM Sept. 18, 1973.

Affd. Sec. 8 Accpt.

[SEAL]

Certified to be a true copy of the registration, which is in full force and effect, with notations of all effective actions taken thereon, excluding transfers, as disclosed by the records of the United States Patent & Trademark Office.

/s/ [Illegible]
Commissioner of Patents
and Trademarks

Attest:

Feb. 25, 1982
C. R. HILL

**[EXHIBIT J TO
KLINE SUPPLEMENTAL DECLARATION]**

[See *ante* p. 57]

[SEAL]

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: Commissioner of Patents and Trademarks
Washington, D.C. 20231

Opposition No. 62,426

United States Olympic
Committee

v.

Golden Age Olympics, Inc.

MAILED
JUN 04 1981
PAT. & T.M. OFFICE

The parties have filed, on May 13, 1981, a stipulation to enter judgment against applicant herein. The stipulation is approved and judgment is hereby entered against applicant. The opposition is sustained and registration to applicant is refused.

/s/ S. Lefkowitz
S. LEFKOWITZ

/s/ D. J. Kera
D. J. KERA
Members, Trademark
Trial and Appeal Board

/s/ G. D. Krugman
G. D. KRUGMAN
Acting Member, Trademark
Trial and Appeal Board

cc:

Richard G. Kline
Beveridge, DeGrandi, Kline & Lunsford
1100 Federal Bar Building West
1819 H Street, N.W.
Washington, D.C. 20006

Franklin C. Whigham
200 West First Street
Sanford, Florida 32771

SETTLEMENT AGREEMENT

THIS AGREEMENT executed in duplicate on the respective dates of acceptance by and between the UNITED STATES OLYMPIC COMMITTEE, a non-profit United States corporation, located at 1750 East Boulder Street, Colorado Springs, Colorado 80909 (referred to herein as "Olympic Committee") and GOLDEN AGE OLYMPICS, INC., A Florida corporation, located at 400 East First Street, Sanford, Florida 32771 (referred to herein as "Golden Age").

WHEREAS, Golden Age filed Application Serial No. 160,792 in the United States Patent and Trademark Office on March 3, 1978 to register "GOLDEN AGE OLYMPICS" with an associated design representative of father time as a service mark in connection with conducting athletic contests for senior citizens (referred to herein as the "opposed mark");

WHEREAS, the Olympic Committee has objected to any use of the word "OLYMPICS" by Golden Age in its trade name or as a component of any mark, including registration of the opposed mark, which the Olympic Committee has challenged in Opposition No. 62,426 that presently is pending before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office; and,

WHEREAS, Golden Age has agreed to permanently discontinue use of "OLYMPICS" in its trade name or as a component of any mark as well as consent to entry of judgment in Opposition No. 62,426 to prevent registration of the opposed mark.

NOW, THEREFORE, in consideration of Golden Age consenting to entry of a Final Judgment in Opposition No. 62,426 refusing registration of the opposed mark and commitment by Golden Age to immediately discontinue and permanently refrain from using or registering any

trade name or mark containing the word "OLYMPICS" or any derivative thereof in connection with promoting or conducting athletic contests for senior citizens, the Olympic Committee releases Golden Age from any existing liability or claim relating to the use of the word "OLYMPICS" in its trade name and as a component of the opposed mark with the understanding that in the event Golden Age fails to fully comply with this commitment in any respect, the Olympic Committee may apply to any United States District Court where a violation or threatened violation of this Settlement Agreement occurs or is about to occur to seek an injunction or other preventive remedy to secure compliance or prevent any threatened violation thereof, and, if requested, Golden Age agrees to consent to and enter no objection to the granting of such injunction or other preventive remedy, nor contest venue or jurisdiction of the court in which such relief is sought, as well as to pay all costs and expenditures incurred to enforce any provision of this Settlement Agreement, if Golden Age is found to have violated or threatened violation of the Settlement Agreement.

This Settlement Agreement shall be binding on the undersigned parties, as well as their related companies, constituent organizations, successors, assigns and representatives upon execution by both parties, and the signatures of the undersigned representatives shall constitute a warranty that they have the authority to enter into this Settlement Agreement and bind the party being represented.

GOLDEN AGE OLYMPICS, INC.

By /s/ John C. Stoner
Title—Executive Manager

ATTEST:

/s/ Virginia M. Longwell
Dated November 6, 1980

[CORPORATE SEAL]

UNITED STATES OLYMPIC
COMMITTEE

By /s/ F. Don Miller
Title—Executive Director

ATTEST:

/s/ Louie J. Perry
Dated 12-15-80

[CORPORATE SEAL]

**[EXHIBIT K TO
KLINE SUPPLEMENTAL DECLARATION]**

[See *ante* p. 58]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 80-2062

UNITED STATES OLYMPIC COMMITTEE
(a federally chartered corporation)
1750 East Boulder Street
Colorado Springs, Colorado 80909
(303) 632-5551

Plaintiff,

vs.

OLYMPIC TRAILS BUS COMPANY, INC.
50 South 20th Street
Irvington, New Jersey 07111
(201) 374-2197

Defendant.

CONSENT JUDGMENT
AND
PERMANENT INJUNCTION

It appearing to this Court that the parties have resolved their respective differences and entry of this judgment shall constitute a full and complete adjudication of this action to which the parties have indicated their consent and it is, therefore, Ordered, Adjudged, and Decreed that:

(1) Olympic Trails Bus Company, Inc., and its successors and assigns, as well as each of its officers, agents,

servants, employees, and all other persons in active concert or participation with them are hereby permanently enjoined from

(a) Using or displaying "OLYMPIC" after January 1, 1982, as a trademark, service mark or trade name and from using or displaying any word, name, symbol, device or combination thereof confusingly similar to "OLYMPIC" (except "Olympia Trails"), including without limitation those terms which

1. are the phonetic, foreign or legal equivalent of "OLYMPIC," or

2. incorporate the letters O-L-Y-M-P-I-C or any colorable imitation thereof (except "Olympia Trails") as a component thereof.

(b) Using or displaying the Olympic interlocking rings symbol or any other plurality of circles or rings whether interlocked or otherwise after January 1, 1982, either separately or in association with any trademark, service mark, trade name, word, name, symbol, or device except that three (3) non-interlocking rings may be used on the specific buses identified in the Appendix hereto until June 1, 1983.

(c) Using or displaying the Olympic interlocking rings symbol or any other plurality of circles or rings whether interlocked or otherwise, either separately or in association with any trademark, trade name, service mark, word, name, symbol or device in connection with any promotional purposes or on any vehicle not owned or operated by Olympic Trails Bus Company, Inc., as of the date of entry of this judgment.

(2) Within thirty (30) days of the signing of this agreement Olympic Trails Bus Company, Inc., agrees to file with all appropriate state and federal agencies all necessary papers respecting the name change required by this decree. Olympic Trails Bus Company, Inc., shall pro-

ceed with reasonable diligence to quickly bring the name change required by this agreement into full fruition when the required approvals of state and federal authorities are received, but in no event later than January 1, 1982.

(3) (a) Within thirty (30) days of the signing of this agreement, Olympic Trails Bus Company, Inc., shall file with the Court a statement setting forth the steps which have been taken to comply with this decree.

(b) When this decree has been fully complied with, but in any event prior to June 1, 1983, Olympic Trails Bus Company, Inc., shall file with the Court a statement signed by an officer of the corporation setting forth the steps which have been taken to comply with this decree.

(4) Olympic Trails Bus Company, Inc., its successors, assigns and officers have the consent of the United States Olympic Committee to utilize "OLYMPIA TRAILS" as as trade name, or part thereof in connection with ground transportation and tours which include ground transportation, so long as such name is not used in conjunction with any circles or rings, shields or escutcheons, torches, or any other word, name, symbol or device tending to cause confusion, to cause mistake, or deceive, or to falsely suggest a connection with the United States Olympic Committee or any other Olympic activity.

(5) Except as expressly provided herein, the complaint and all claims and counterclaims in this action are dismissed with prejudice.

(6) Each party shall bear its own costs and attorney's fees.

ENTERED and issued this 25th day of February, 1981.

/s/ Oliver Gasch
United States District Judge

AGREED

/s/ Richard G. Kline
RICHARD G. KLINE
JOSEPH D. LEWIS
Beveridge, DeGrandi, Kline & Lunsford
1819 H Street, N.W.
Washington, D.C. 20006
(202) 659-2811
Attorneys for Plaintiff

AGREED

/s/ Eric Meierhoefer
ERIC MEIERHOFER
JOSEPH L. STEINFELD, JR.
1511 K Street, N.W.—Suite 423
Washington, D.C. 20005
(202) 347-9332
Attorneys for Defendant

* * * *

**[EXHIBIT L TO
KLINE SUPPLEMENTAL DECLARATION]**

[See *ante* p. 58]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-496

NATIONAL AMATEUR SPORTS FOUNDATION,
Plaintiff,

v.

UNITED STATES OLYMPIC COMMITTEE,
Defendant.

CONSENT DECREE

It appearing to this Court that the Parties have resolved their respective differences and entry of this decree shall constitute a full and complete adjudication of this action to which the parties have indicated their consent and it is, therefore, Ordered, Adjudged and Decreed that:

(1) NASF is not currently and shall not use "OLYMPIC" in connection with the solicitation of funds or obtaining contributions.

(2) NASF is not currently and shall not make any statement or representation tending to cause others to believe that Plaintiff is in any way connected with USOC or any Olympic activity.

(3) NASF is not currently and shall not use in connection with any services "OLYMPIC" or any colorable imitation, simulation or designation confusingly similar

thereto or symbolic therewith, in any manner which suggests or implies association, affiliation or connection with the United States Olympic Committee or any Olympic activity.

(4) USOC shall send informative communications to all state attornies general and any other officials it has previously contacted, including the United States Postal Service, concerning the activities of NASF, which communications may be in the form of a copy of this Consent Decree, the purpose of which is to advise said individuals that the differences between the two parties have been resolved.

(5) NASF shall provide to the USOC an Accounting, prepared by a Certified Public Accountant, of all contributions received as a result of direct mail campaigns by NASF which included distribution of an Olympic Sports Survey. In the event this Accounting demonstrates that contributions exceeded the costs incurred in the direct mail campaign, the difference shall be contributed by NASF to the USOC, but, if the costs exceeded the contributions received in response thereto, USOC agrees not to make any efforts to recapture or recover the same.

(6) This action is dismissed with prejudice and each party shall bear its own costs and legal fees in connection herewith.

Dated: 3-21-80

/s/ Thomas A. Flannery
United States District Court
Judge

AGREED

/s/ Robert R. Sparks, Jr.
ROBERT R. SPARKS, JR.
MICHAEL D. HUGHES
SEDAM & HERGE
7600 Old Springhouse Road
McClean, Virginia 22102
(703) 821-1000
Counsel for Plaintiff

AGREED

/s/ Richard G. Kline
RICHARD G. KLINE
Beveridge, DeGrandi, Kline & Lunsford
Federal Bar Building West
18 H. Street, N.W.
Washington, D.C. 20006
Counsel for Defendant

**[EXHIBIT M TO
KLINE SUPPLEMENTAL DECLARATION]**

[See *ante* p. 58]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-82-596

UNITED STATES OLYMPIC COMMITTEE
Plaintiff

vs.

DAVID SHOE COMPANY, INC., *et al.*,
Defendants

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

SPIEGEL, J.:

This matter came before the Court upon the complaint of the plaintiff, alleging violation of the Olympic symbol, trademark infringement and unfair competition (doc. 1), Plaintiff's Motion for Preliminary Injunction with memorandum attached (doc. 2) and Affidavits of Fact in support of said motion made by plaintiff's general counsel and by the president of the company with the exclusive right to market the products in issue. Due notice was given to defendant, Sol Weisenberg, president of defendant corporation, and he was present at the hearing with his attorney. The Court having heard testimony of witnesses for both parties, the arguments of counsel and having assessed the credibility of the witnesses, finds that

a preliminary injunction should issue and makes the following findings in respect thereto:

1. This Court has jurisdiction over the parties and subject matter of this action under the Trademark Laws of the United States, 15 U.S.C. § 1121, the Olympic Symbol protection statute, 36 U.S.C. § 380 and by virtue of 28 U.S.C. §§ 1331, 1337 and 1338.

2. Plaintiff United States Olympic Committee (USOC) is the registered owner of the Trademarks and Service Marks designated in plaintiff's Exhibits 1 through 4. These include the mark "Olympic", ("Olympics"), the Olympic symbol consisting of five interlocking rings displayed in various forms both alone and with the abbreviation "USA" and the symbol of the United States Olympic Committee that also contains the Olympic symbol of interlocking rings.

3. Plaintiff USOC has entered into an exclusive licensing agreement with MCF Footwear, Inc. (MCF) for the use of the marks "Olympic" and "Olympics" and the Olympic symbol of interlocking rings on athletic shoes. Sanshoe Trading Company, Inc. (Sanshoe) has, in turn, been oppointed by MCF as the exclusive marketer of such licensed footwear. Sanshoe has contracted with J.C. Penney Company, Inc. (J.C. Penney) as the exclusive customer and reseller at retail of shoes bearing the mark "USA Olympics" and the Olympic symbol of interlocking rings.

4. Defendants purchased 73,000 pairs of shoes bearing plaintiff's Trademarks and Service Marks from the TAEHWA Company in Korea. These shoes were manufactured for Sanshoe and then rejected by Sanshoe because they were defective in their design or performance.

5. Defendants were not authorized by plaintiff or anyone in privity with plaintiff to use or sell goods bearing plaintiff's Trademark and/or Service Mark.

6. The shoes are presently in a warehouse under bond to the United States Customs Service and defendants have not yet paid any import duty on the shoes.

7. The United States Customs Service issued a Notice of Redelivery to defendants on June 8, 1982 with regard to the 73,000 pairs of shoes. The Notice states, "The above described athletic footwear that is subject to Trademark and Copy-Right restriction is to be redelivered to U.S. Customs custody within thirty days from date of this notice."

8. Defendants will attempt to sell said shoes bearing plaintiff's Trademarks and Service Marks if the United States Customs Service releases them to defendants upon payment of duty.

9. The threat of irreparable harm to plaintiff, both economically and with regard to its reputation and status, is real if defendants attempt to sell or sells the shoes bearing plaintiff's Trademarks and Service Marks.

10. Plaintiff has no adequate remedy at law.

11. Plaintiff has standing to maintain this action as owner of the Trademarks and Service Marks in question. *J.C. Penney Co., Inc. v. Parrish*, 339 F. Supp.. 726 (D. Idaho 1972).

12. Under the authority of 36 U.S.C. § 380 and 15 U.S.C. § 1121, plaintiff is entitled to injunctive relief.

13. It is hereby ORDERED, therefore, that defendants are temporarily restrained and enjoined:

A. From using or causing to be used in any form whatever, for the purpose of trade or for any other purpose, the marks OLYMPIC, OLYMPICS or the Olympic symbol of interlocking rings or any colorable imitation or simulation thereof, either alone or in association with the "USA" abbreviation;

B. From making any statement or representation tending to cause others to believe that defendants are in any way connected with plaintiff or with any Olympic activity; and

C. From distributing, selling or in any manner whatsoever conveying any goods in their possession, including shoes, which contain the marks OLYMPIC, OLYMPICS or the Olympic symbol of interlocking rings or any colorable imitation or simulation thereof, either alone or in association with the "USA" abbreviation.

until further order of this Court.

SO ORDERED.

/s/ S. Arthur Spiegel
S. ARTHUR SPIEGEL
United States District Judge

[EXHIBIT B TO WALKER DECLARATION]

[See *ante* pp. 98, 219]

• • • •

[Figure of Woman Speaking and Bottle of Rumpleminze Peppermint Schnapps. Woman is saying]:

Rumpleminze donated $1000 to the Gay Olympic Games

• • • •

100 PROOF. IMPORTED FROM GERMANY.
ENJOY IN MODERATION.

• • • •

[EXHIBIT H TO WADDELL DECLARATION]

[See *ante* pp. 98, 219]

[THREE-RING LOGO]

GAY OLYMPIC GAMES
P.O. Box 14874
San Francisco, California
U.S.A.

Dear Prospective Supporter:

I would like to take a few minutes of your time and explain something that will begin in the City of San Francisco on August 28, 1982. It is an event that will have a great deal of impact on the public image of gay men and women, not only in the United States, but throughout the world.

The event is the Gay Olympic Games! Never before, in the history of gay people has there been such an international gathering for such a positive purpose. We expect as many as 4,000 athletes from American cities and more than 20 foreign countries to participate. These athletes will compete in the following sports: basketball; scoccer; weightlifting,; bowling; marathon; track & field; billards; swimming; volleyball; cycling; physique; wrestling; tennis; golf; rugby; softball. All of the sports are for both men and women with the exception of wrestling for men only and rugby for women only.

This event is becoming an important opportunity for gay men and women all over the world to demonstrate that our character has a wide and varied range. It is an opportunity to expand beyond a falsely tainted image. It is an opportunity to show that gay men and women, like all other responsible citizens of the United States participate in the same ideal. We invite you to become involved in our endeavor to expand upon our image. Your help will

enable us to present to the world a serious sporting event from which more respect for gay people will grow. The success of these Gay Olympic Games can effectively help balance the onslaught of the Moral Majority's perspective.

• • • •

The Gay Olympic Committee needs your help. We may, in the future, be able to solicit funds in the same way as the traditional United States Olympic Committee, but that opportunity is not yet available to us. We are depending on your contribution to make these Games a positive and historical reality for gay men and women.

• • • •

We are all volunteers on the Gay Olympic Committee, and there are no salaries. With less than one year to go, we need to escalate our outreach and prepare massive amounts of material and facilities. We particularly need to make gay people in other countries aware of the events (20 foreign cities have confirmed so far. We want many more).

• • • •

Gay Olympic Games '82 will be an event to make us all proud. Please help us make it possible. Thank you.

Yours truly,

/s/ Tom Waddell
THOMAS F. WADDELL, M.D.
Chairman
Gay Olympic Committee

[EXHIBIT A TO WADDELL DECLARATION]

[See *ante* pp. 98, 219]

GAY OLYMPIC GAMES
P.O. Box 14874
San Francisco, CA 94114

September 11, 1981

Dear Prospective Supporter:

This letter is in lieu of our upcoming newsletter which we will send you upon its completion. There is little question that the stimulus for organizing teams for competition in the GAY OLYMPIC GAMES (GOG-1) will come from the dissemination of news and updates in the publications available to members of the Gay communities (both men and women).

The games are scheduled to begin with opening day ceremonies on August 28th, 1982. We are expecting representatives from cities all over the word and it appears likely that hundreds of cities in the U.S.A. will send contingents.

We are preparing complete information packages to send all those interested in competing. These packages should be ready by November of this year, but the timing of the package should not preclude the organizing and fund raising that each city's Gay community will need to be represented.

On opening day at Kezar Stadium in San Francisco, with a seating capacity of 60,000 people, there will be a ceremony that will rival the traditional Olympic Games.

Alex Rasch, a San Francisco musicologist, is composing an original anthem for the games. The torch that will light the Olympic flame will conclude its journey from Stonewall in New York City, arriving here via a network of runners across the United States.

There will be seven days of competition in various facilities around the city. Athletes will be lodged in private homes. They will have access to all competitive sites via a series of official vehicles making scheduled loops beginning in Castro Village.

Local businesswoman, Chris Puccinelli, is designing an original Olympic medal for the top three places in each event. It will be struck in gold, silver, and bronze. Every athlete, regardless of place of finish will receive a certificate of participation in their sport.

There will be a simultaneous week of cultural events for spectators to attend. Gay men and women: artists, musicians, actors, singers, and dancers will perform and exhibit in halls, theaters, and galleries throughout the city. The representation of a full range of the Gay community's cultural activities will be consistent with the traditional modern olympiads where the purpose was to accentuate all that was athletic and aesthetic. From competition on the playing field to activities of the mind and spirit, these games will truly be a revelation of the cultural health of the men and women in the Gay community. Perhaps it may even be exemplary for the traditional Olympics which today are racked with competition in the political arena, overlooking the grander purpose of the games . . . to bring people together in a friendly spirit of endeavor.

We in San Francisco are preparing our magic city for this historical FIRST GAY OLYMPICS. The games will consist of men and women in serious athletic competition. That does not mean individuals must be world class athletes to compete in the games, but serious, yes! In fact, we wish to emphasize the element of participation rather than winning. Naturally every event will have its champion, but just as important will be the experience of having participated.

We are working through a corporation that is non-profit and tax-exempt. Tax deductible status is pending. We

have no paid positions and all of our endeavors are the result of volunteer efforts. If you agree with what we are doing, we ask you to join this effort with a contribution. It is an historical event.

To send contributions or to request further information, please contact:

G.O.G.
Box 14874
San Francisco, CA 94114

Our next communications will be the newsletter entitled:

"OLYMPICS '82"

It will contain more information and an update on our progress as well as a request form for the complete "Information and Registration Package".

Join in now! It is our turn!

Yours truly,

TOM WADDELL, M.D.
Chairman, GOG Committee

[EXHIBIT J TO WADDELL DECLARATION]

[See *ante* pp. 98, 219]

GAY OLYMPIC GAMES
P.O. Box 14874
San Francisco, California 94114
U.S.A.

[THREE-RING LOGO]

SAN FRANCISCO ARTS AND ATHLETICS
PRESENTS
THE
GAY OLYMPIC GAMES
AND
GAY CULTURAL WEEK

CONTENTS: (GENERAL INFORMATION
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INTRODUCTION

Greetings!

The idea of an international athletic event for Gay men and women was initiated in 1980 by several members of the Gay community of San Francisco. The initial concept was to provide a games atmosphere for serious athletic competition similar to the traditional Olympic Games, but modified to meet the requirements of Gay communities throughout the world.

The result was the formation of the San Francisco Arts and Athletics to sponsor the Gay Athletic Games and the Gay Cultural Week to complement the Games. San Francisco Arts and Athletics is a non-profit, tax-exempt organization composed entirely of volunteers whose purpose is to sponsor the Games and to educate the public on the vitality, variety and versatility of the Gay community through the promotion of sports events within the framework of Olympic style competition.

The Games are designed to attract competitors from around the world, reflecting the prevalence of Gay organized athletics in the major population centers, and to encourage participation from smaller, less organized areas.

While it is expected that all participating athletes will be striving for excellence, the emphasis of the Games will be on participation, cooperation, and friendship. The presence of an international community of Gay competitors will attest to the idea that athletic competition is dignified and wholesome activity for all people, regardless of their creed, color, age or gender.

• • • •

ELIGIBILITY

The Gay Athletic Games are open to individuals and teams representing a geographically recognized municipality described as a city, township, or village. There

must be an address of the individual or organization residing in that municipality.

There are Games standards established in some, but not all sport events. Please consult the rules and regulations in your chosen sport regarding qualifications.

There are no restrictions for eligibility based on color, creed, gender, nationality, or age.

The Gay Athletic Games will include the major sports listed below. At this time, "Major Sports" are defined to be those sports which enjoy large scale participation by the Gay communities at large.

SPORT	MEN	WOMEN
	X	X
TRACK & FIELD	X	X
BASKETBALL	X	X
BILLIARDS (pool)	X	X
BOWLING	X	X
BOXING	X	X
CYCLING	X	X
GOLF	X	X
POWER LIFTING/ WEIGHT LIFTING	X	X
PHYISQUE	X	X
RUGBY	O	X
SOCCER	X	X
SOFTBALL	X	X
SWIMMING & DIVING	X	X
TENNIS	X	X
VOLLEYBALL	X	X
WRESTLING	X	O
MARATHON	X	X

REGISTRATION

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REGISTRATION FEES:

• • • •

Any team of four or more in any single sport requires a $100 registration fee. Any individuals or teams up to four requires a $25 registration fee per individual.

Fees must accompany the registration form. Fees must be in, or converted to, American dollars ($). This can be in the form of checks, money orders, or cashiers checques.

No team or individual will be permitted to compete in the Gay Athletic Games unless registered with the Organizing Committee by June 10, 1982.

CENTRAL STAGING AREA

Upon arrival in San Francisco all participants should proceed to the Central Staging Area at METROPOLITAN COMMUNITY CHURCH, 150 Eureka Street, San Francisco 94114 (in the heart of the Castro area). Each participant will be processed through registration at that location.

You will be photographed and a photo-identification card will be laminated with your name, city, sport and competitors number.

You will receive a complete schedule of events with times and locations. You must check this schedule carefully to plan your arrival at the competitive site for your events.

You will be assigned a private home for the duration of your visit. You will be introduced to your host and taken to your quarters. Hosts will extend their hospitality up to and including the Closing Day Ceremonies on September 5, 1982. Hospitality beyond this date is optional for the host.

• • • •

SPORT COMMITTEES

Each individual sport is headed by a local-based chairpersons. These chairpersons have corresponded with others in their sport to draw up a complete package of rules and regulations and a competitive format. They will also be responsible for determining the match-ups of all teams and individuals in the competition. The format, rules and regulations are included in each sport application.

• • • •

RULES OF CONDUCT AND DRESS

Representative athletes from gay communities all over the world will compete in the Gay Athletic Games. The Games will be a reflection of our pride and self-respect as well as our serious intent to perform in our chosen sport.

This historical event will be recorded audio-visually by the gay and non-gay media and will be viewed by spectators of every conceivable persuasion. A full length documentary movie will be made by a well known producer.

It is expected, as participants in the Gay Athletic Games, that while on the playing fields or arenas, all athletes, coaches, trainers, and managers will conform to the spirit and the codes of good sportsmanship, as representatives of their respective cities and of the gay community at large.

It is expected that all persons who are registered to participate in the Games will have acknowledged and accepted the rules and regulations governing their respective sport prior to their arrival at the Games.

All competitive uniforms, warm-up, and marching uniforms must be regulation as defined by the responsive Sport Committee and the Organizing Committee (marching uniforms). Any questions or requests for departures

from the dress code should be addressed to that Sport Committee prior to the Games.

No advertising, slogans, graffiti, or suggestive symbols will be permitted on any uniforms, either competitive, warm-up, or marching.

The Gay Athletic Games Organizing Committee reserves the right to rule ineligible any team or individual who has contravened any of its rules or regulations, or who has acted in a manner which brings disrepute upon the Gay Athletic Games.

The only symbols permitted on any uniforms in the Gay Athletic Games will be the letters describing the name of the city or village represented. The official seal of the city may appear on the left breast of the marching uniform, and on the city flag to be used on Opening Day Ceremonies.

Team numbers may appear on uniforms in those sports which require such identification; i.e. basketball, softball, rugby, soccer, etc., while sports such as track and field, tennis, cycling, etc. will receive individual numbers to be sewn on the competitive uniforms.

AWARDS

An original medal is being struck for the Gay Athletic Games. The top three finishers in each event will receive the medal suspended by a ribbon.

1st Place	Gold
2nd Place	Silver
3rd Place	Bronze

Certificates with event and order of finish will be awarded to the top six places.

Certificates of participation will be awarded to all competitors, listing their sport and event.

Shortly following the final in each event in each sport, the top six place finishers will be announced and the names and respective cities will be displayed. There will be a pause in the activities while the three top finishers will be presented their medals by an official contingent. All names and results will be published daily and distributed to key information points throughout the city. Presently we intend to use the Gay Press Association (G.P.A.) for dissemination of results and human interest stories to all subscribing organizations worldwide.

TRANSPORTATION

Transportation to San Francisco is the responsibility of the organizational or individual registrant. Make your plans as early as possible since this will be a peak season for visitors.

• • • •

MEALS

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MEDICAL CARE

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IMMIGRATION

Competitors and spectators attending the Gay Athletic Games could have some difficulties with the Immigration and Naturalization Service, as well as the United States State Department in their foreign embassies.

The first problem could be obtaining a visa to visit the United States. In some countries the applicant must apply in person to the American Embassy or the American Consulate for a visa. The person reviewing the application (in some cases the application itself) may question the applicant's sexual orientation, particularly if it is known that the purpose of the visit is gay-related. If the response to such questions indicates that one is Gay, it is likely in most countries that your visa application

will be denied. There is no redress available from such a denial. In other words, a "yes" answer will prevent you from obtaining a visa, or even subsequent visas.

The second problem could be at the point of entry. As of this date, border guards are not permitted by regulations to inquire about your sexual orientation or preferences. Only two circumstances could cause problems: (1) someone travelling on the same aircraft informs an immigration officer that you are "homosexual" or (2) you make an "unsolicited, unambiguous admission" of homosexuality to a border guard.

Provocative slogans or buttons worn on clothing focus attention on this question and lead to a secondary search. Carrying "homosexual" or gay-related materials, or even personal letters have been known to implicate individuals in a secondary search.

If any of these events occur, you will be called into a private room and asked the question: "Are you a homosexual?" If you respond "No!" you will be permitted to enter. If you respond "Yes!" you will be held to appear before an immigration judge.

To minimize any problems, we suggest the following:

Apply for the longest possible visa. Six months if possible.

Stagger the visas. Don't all apply at once.

Avoid giving pinpointed dates as to where you will be at any particular time during your "vacation".

Just be sure that your visa period overlaps the events you intend to visit. The time before and the time after your event should suit your individual plans.

We will send you names and addresses to contact if any difficulties should occur. This will include legal counsel. Hopefully, none will be needed.

THE GAMES

The Gay Athletic Games are for all gay men and women who are interested in organized athletics. There are 15 sports available with corresponding men's and women's events. Two others, rugby and wrestling, are for women and men respectively.

The term Olympic, in the generic sense, was originally applied to these Games in view of the fact that we are using that particular format to stage the Games. It is somewhat misleading, however, when used in the traditional context. To many it implies an intense, high level of performance geared chiefly to winning. But these Games have a different emphasis in that we are interested in bringing together gay men and women who view athletics as a social and recreational endeavor.

• • • •

PRESS, RADIO, AND TELEVISION COVERAGE

San Francisco Arts and Athletics retains all visual and sound rights to the Gay Athletic Games as stated in the Articles of Constitution.

All gay and non-gay press, radio and television representatives will be welcome at the Gay Athletic Games. With proper identification, all representatives will be issued press cards and given complete information packages.

An official gay news agency may be designated for the most complete and efficient dissemination of the news of the daily events.

A docu-drama of approximately 75 minutes, and a documentary film of approximately 20 minutes is being planned.

OPENING DAY CEREMONIES

All athletes, coaches, trainers and team executives will be expected to participate in the Opening Day Ceremonies on August 28, 1982.

Each team will march behind the flag which represents their city. The flag should have the city or town's name clearly visible. The only other markings on the flag may be the emblem of that city or town.

It is hoped that each team will have marching uniforms. We suggest that the men's and women's uniforms complement each other. In San Francisco, for example, we are tentatively planning for the women to wear white blazers with navy blue slacks, a blue cap and shoes. The men will wear navy blue blazers, white slacks, shoes and fedoras.

Each city should select a single flag bearer to lead the contingent, no matter how small the contingent. The flag bearer will be followed by the coaches, trainers and officials. They in turn will be followed by the women's team, then the men's team.

A parade of marching bands from around the country and the world, twirlers, the flag corps, celebrities, and entertainers will precede the athletes onto the field.

The teams will march in alphabetic order, by city, make one full turn around the periphery of the field to pass the reviewing stand, then one more turn onto the field to line up behind their flags and facing the reviewing stand.

[Sketch of arena omitted in printing]

The program will last approximately four hours. There will be local and professional entertainment. Introductions and speeches will be held to the barest minimum.

The torch bearer will enter the stadium to the combined musical effort of all the bands which will play the original anthem composed for the Gay Athletic Games. All teams will be on the field at the moment the torch

is lit, signifying the opening of the First Gay Athletic Games.

CLOSING DAY CEREMONIES

Closing Day Ceremonies are in the planning stage. It is possible that they will be held in an area other than Kezar Stadium. Details will be made available as they develop. They will he held on Sunday, September 5.

• • • •

INTERPRETERS

We intend to have interpreters available as requested. If you or your group do not speak English we would appreciate hearing from you at the earliest possible date so we may make arrangement to have all relevant information translated into your native language.

We will also arrange to have an interpreter who is trained in your native language to accompany you through the entire nine days of events.

• • • •

[EXHIBIT T TO WADDELL DECLARATION]

[See *ante* p. 98]

ENTERTAINMENT ADVOCATES INC.
5 Buena Vista Terrace
San Francisco 94117
415-861-1167

CONTACT: Fred Ponder or John Rosser
(415) 861-1167

OFFICIAL OLYMPICS ENTERTAINMENT PROMISES SCIENCE FICTION EXTRAVAGANZA

SAN FRANCISCO—The Celestial Lords await you—at the official entertainment event of the Gay Olympics!

"Celestial Lords: A Megasensory Science Fiction Spectacular" will hit the heights fantastic the evenings of August 27, 28 and 29 at San Francisco's magnificent Galleria Design Center. Each evening will be an extraordinary fusion of party, dancing, and theatrical performance featuring world champion body builders, contemporary ballet, and state-of-the-art special effects.

Produced by Entertainment Advocates, Inc. and Rhaz Ziesler, "Celestial Lords" will present the saga of five mythic gods and their journey through the universe. The Celestial Lords are enacted by Tom Platz, Mr. Universe; Scott Wilson, Mr. International; John Brown, Mr. Universe; Shelley Gruwell, Miss America; and "Pillow", Miss California.

Each evening promises to bring science fiction adventure alive, with special effects by Laser Image, the creators of Laserium; lighting designed by Aubrey Wilson, dean of the Design Technology School at California Institute of the Arts; and costumes by W.J. Evans, costumer for the Ice Capades; and sets by Lizette Thomas

and Michael Devine, scenic designers with film, television, and Broadway credits.

And as befits an evening of Olympian celebration, there will be plenty of dancing between acts to the music of DJ Tim Rivers. A no-host bar will be open throughout the evening.

General admission tickets to "Celestial Lords" are $30, and are available for each of the three evening's festivities—Friday and Saturday, August 27 and 28, 9 p.m.-3 a.m., and Sunday, August 29, 7:30 p.m.-midnight. Performances and special effects begin an hour after doors open.

A percentage of anticipated ticket sales has been donated to the Gay Olympics Committee.

Tickets can be purchased nationally through Ticketron outlets, or in San Francisco at BASS outlets, Gramophone, All American Boy, Headlines, Bodycenter, Lenny's Linen Closet, Aloha Records, and Does Your Mother Know.

Those wishing to order by mail can send their checks to Entertainment Advocates, 5 Buena Vista Terrace, San Francisco, Calif., 94117. Please indicate performance date desired.

PRESS PACKAGE AND PHOTOGRAPHS AVAILABLE

[EXHIBIT U TO WADDELL DECLARATION]

[See *ante* p. 98]

[THREE-RING LOGO]

NATIONAL TORCH RUN
STOPS HERE!
DESTINATION: GAY OLYMPIC
GAMES I, SAN FRANCISCO, USA

Gay Olympic Games
P.O. Box 14874
San Francisco, Ca.
94114
415/861-8282

NEWS ADVANCE
FOR IMMEDIATE RELEASE ON ARRIVAL OF TORCH RUN LOCALLY

(Prepared May 26, 1982 by Edwards & Associates Public Relations, (415) 832-6677)

Contacts:

_____

Tom Waddell, M.D., or Mark Brown,
(415) 861-8282/0882/0280

Local sports fans, human rights advocates and history-watchers should take note that _____
(city/town name)
is on the route of the National Torch Run leading to the world's first Gay Olympic Games.

Begun Sunday, June 13 from the Stonewall area of Manhattan's Greenwich Village in New York City, the 4,000-mile cross-country event is scheduled to reach San Francisco, California, Aug. 22.

The hand-carried light being relayed coast-to-coast will be a centerpiece during the Gay Olympic Games I, Aug. 28 to Sept. 5 in San Francisco. An estimated 50,000 people from many cities and towns in the U.S. and several foreign countries will attend the nine-day celebration which includes concurrent Cultural Week activities such as performing and other creative art exhibitions.

A former tavern in New York, called the Stonewall, is the symbolic birthplace of modern gay rights advocacy.

Men and women will compete in the Gay Olympics in 17 different sports in an effort to balance false perceptions of people with alternative sexual preferences. For more information, call (415) 861-8282.

[EXHIBIT W TO WADDELL DECLARATION]

[See *ante* p. 99]

CITY OF BOSTON
OFFICE OF THE MAYOR
CITY HALL BOSTON

KEVEN H. WHITE
MAYOR

PROCLAMATION

WHEREAS: August 28, 1982 marks the beginning of the first International Gay Olympic Games which will be conducted in San Francisco, California; and

WHEREAS: 1500 athletes from 15 countries, 25 states and 110 cities will be competing in a variety of athletic endeavors from August 29, through September 5; and

WHEREAS: 72 athletes from the City of Boston will be traveling to compete in these events; and

WHEREAS: the Gay Olypmic Games will foster a sense of self-esteem, community spirit and cooperation;

NOW, THEREFORE: I, Kevin H. White, Mayor of the City of Boston do hereby proclaim the week of August 28 through September 5 as

[SEAL]

GAY OLYMPIC GAMES WEEK

and urge the citizens of Boston to recognize this special tribute.

/s/ Kevin H. White
Mayor

[EXHIBIT X TO WADDELL DECLARATION]

[See *ante* p. 99]

A2 ****N May 23, 1982
S.F. Sunday Examiner & Chronicle

Bill Mandel

[Photograph omitted in printing]

A very serious Gay Olympics

WHEN PLANS FOR this summer's San Francisco Gay Olympics were announced, cynics snickered, thinking the event might bring new meaning to the term "drag races."

But now, three months before the games are set to begin, the snickering has stopped. Under the leadership of 1968 U.S. Olympic decathlon team member Tom Waddell, the Gay Olympic Games are shaping up as a legitimate meeting of thousands of athletes—women and men, gay and straight—from around the world.

As of this week, more than 3,000 athletes representing scores of American cities and at least five foreign countries have registered to compete in 16 sports during the games, which will run from Aug. 28 to Sept. 5. The games are open to athletes of any sexual persuasion.

The organizing committee has also received commitments from enough certified officials in each sport to guarantee world-class officiating.

Beyond the excitement of gathering so many athletes, officials and spectators for an athletic spectacle, the Gay Olympics are emerging as a potent socio-political symbol.

By demonstrating the broad reach of the gay community—from the stereotypical flash of marching bands to the unexpected roughness of the soccer field—the Gay Olympics will do much to dispel prejudice and ignorance.

• • • •

UNFORTUNATELY, there's plenty of prejudice and ignorance to be found at the intersection of athletics and homosexuality.

"At the highest level of sports," recalls Waddell, 44, who is now a physician and corporate consultant, "it's just naturally assumed that all the male competitors are macho lovers. We're all big, strapping athletes, so everybody figures we must be great ladies' men."

Waddell, who placed sixth in the world at the '68 Mexico City Olympics, was closeted during the height of his athletic career.

"When I came out in the early '70s," he says, "all my old teammates stopped talking to me. They figured I was just a sick guy who should be ignored."

The issue of homosexuality in sports has arisen more and more frequently in reecent years. Billie Jean King's highly publicized and highly sanitized discussion of her homosexuality put the spotlight on women's tennis, where gay athletes form an important nucleus of the game's top players.

There have been reports of homosexuality in men's pro sports, especially football. But "revelations" about gay women or men athletes shouldn't shock anyone. There are gay people in every walk of life, filling important, responsible positions. That's the point of the Gay Olympics.

"Obviously, a lot of athletes are going to be making a statement by competing," Waddell told me. "But straight athletes are more than welcome. Our feeling is, if a straight athlete wants to participate and go around the country showing off his or her gold medal from the Gay Olympics, that's great."

• • • •

WADDELL'S SUCCESS in sports and in his profession earned him the 1980 Cable Car Award as Outstanding Gay Male Athlete. The idea for this summer's games popped out of his mouth at the awards banquet.

"I just told the crowd it would be great if San Francisco could host a gay Olympics," he says, "and the audience went crazy. I was trapped, in a way. The idea had been born, now we had to nurture it."

Along with Mark Brown, who was instrumental in raising San Francisco's Gay Softball League to international prominence, Waddell and a staff of volunteers began the hundreds of tasks necessary to mount an Olympic-style competition.

They were nearly stripped of the term "Olympics" earlier this year, when the U.S. Olympic Committee (USOC) asserted ownership of the word and demanded the San Francisco games drop its use.

This struck Waddell's group as discriminatory inasmuch as "Olympics" was being used quite freely in such events as the Crab Cooking Olympics in San Francisco, the Dog Olympics in Texas, the Armenian Olympics in Hayward, the Diaper Olympics in Los Angeles and the Rat Olympics in Sacramento.

The USOC has since backed off, says Waddell, who plans to continue use of "Olympics."

City institutions have cooperated handsomely with the organizers: San Francisco State (swimming, track and field), Kezar Pavilion (basketball), Kezar Stadium (rugby), Harding (golf), Golden Gate Park (tennis), Balboa Stadium (soccer), Lincoln High (volleyball) and McAteer High (wrestling).

The games will include competitions in billiards, bowling, boxing, cycling, weightlifting, bodybuilding, softball, diving and the marathon.

All will offer men's and women's divisions except for wrestling (men only) and rugby (women only).

Like its quadrennial parallel, the Gay Olympics will boast TV coverage: The BBC is sending crews for international broadcast, and Polaris Communications, a gay-oriented American cable-TV operation, will tape the events for domestic airing.

[EXHIBIT Y TO WADDELL DECLARATION]

[See *ante* p. 99]

GAY OLYMPIC GAMES

[Three-Ring Logo]

Gay Olympic Games
P.O. Box 14874
San Francisco, CA.
84114
415/861-8282

NEWS
FOR IMMEDIATE RELEASE ON RECEIPT

An Introduction to the first
GAY OLYMPIC GAMES, Aug. 28 through Sept. 5, 1982
Hosted by San Francisco, California, USA

(A Background Release, revised July 1982)

For more information, call:
Tom Waddell, M.D., or Mark Brown
(415) 861-8282, 0882 or 0280

LATE INTEREST FROM FORMER OLYMPIANS, 12 COUNTRIES EXTENDS DEADLINES

At least three former U.S. Olympic team athletes and entries from a dozen other countries have prompted the organizers of the first Gay Olympic Games to continue accepting registrations until at least August 10 for the San Francisco games opening August 28.

By early July, nearly 1,000 women and men had registered for the historic competition and associated Cultural Week activities which will run nine days through September 5.

Planning for the first Gay Olympics began in 1980 when a small group of gay athletes and sports fans envisioned "an opportunity to expand our image and educate the general public on the vitality, variety and versatility of the gay community. . . ."

By early 1982, a young nonprofit and volunteer sponsoring organization called San Francisco Arts & Athletics had been formed and quickly attracted interest from more than 2,000 potential participants in about 20 countries. Some of the athletes have been top ranked in their sport.

By July 1, at least three former U.S. Olympians were among the registered athletes—one of them a woman swimmer—although emphasis remains on participation, not competition.

By opening ceremonies Aug. 28 at Kezar Stadium in San Francisco, the Gay Olympics expects about 2,000 women and men present for competition in 17 different sports. An estimated 30,000 visitors may gather in San Francisco during the nine-day celebration which also includes artistic exhibitions and performances showcasing many kinds of creative talent.

Registration (at $25 per person or $100 per team of four or more) will remain open until at least August 10 to people representing any city or town in the world. Game standards are established in all sports, and rules and qualifications are available for each sport by writing the Gay Olympics, Box 14874, San Francisco, CA 94114, USA. Telephone (415) 861-8282 or 861-0882.

Tickets for the opening ceremonies August 28 and the closing ceremonies September 5 are available to the public at $15 each or $25 for both, prepaid by check or money order to the above address. (You may visit the offices at 597 Castro at 19th St., San Francisco.)

The 17 sports organized under the Gay Olympic Games are: basketball, billiards, bowling, boxing and cycling; golf, marathon, physique, powerlifting, rugby (women only), and soccer; softball, swimming and diving, tennis, track and field, volleyball and wrestling (men only).

One of the former Olympians competing is Tom Waddell, M.D., chairman of the Gay Olympic Games organizing committee who placed sixth in decathlon for the USA in the 1968 summer games in Mexico. Mark Brown, former sports writer who helped bring gay softball to national prominence in the U.S., chairs the sports committee with the support of co-chair Alita Rosenfeld.

Introductory material sent to interested athletes says, in part:

"While it is expected that all participating athletes will be striving for excellence, the emphasis of the games will be on participation, cooperation and friendship. . . .

"Obviously, many gay men and women who are not 'out' will exclude themselves from the competition. That is understandable since many of them who enjoy athletics would jeopardize themselves by appearing in the games. Hopefully, they will lend their support in the form of donations and by appearing as spectators. That leaves it up to those of us who live openly in the gay sub-culture to make the strongest possible statement with this exciting opportunity," writes the sponsors.

In January, 1982, the U.S. Olympic Committee based in Colorado Springs challenged the Gay Olympic Games under threat of a lawsuit to stop using the words Olympic and Olympiad. The Gay Olympic Games organizers expect their rights to use the words are legally justified and, therefore, continue using the name, Gay Olympic Games.

The games are being financed by tax-deductible contributions, special fund-raising benefits, sales of posters,

buttons and t-shirts, and from concessions, nominal registration fees and ticket sales.

By early July, about $75,000 had been raised toward a budget goal of over $200,000—not including funds for individual or team participants such as travel expenses being raised separately world-wide.

While each participant or team is responsible for their own food and transportation, San Francisco residents are volunteering to arrange free housing for visiting athletes in private homes. More volunteers for housing and about 20 other working committees are still needed, and are growing in proportion to registrations.

U.S. visitors to the Gay Olympics who are arriving before the August 28 opening or remaining in the Bay area after the closing ceremonies September 5 are also encouraged to help in any way they can.

Hundreds of small and large business organizations and professionals from the San Francisco Bay area, other states in the U.S. and some other countries have contributed money, time, talent and business products and services to the Gay Olympics. Much more sponsorship is needed, however.

Those individuals or businesses contributing at least $200 in cash in a single donation are considered official sponsors, and may be recognized with special attention in the published program.

Because the paperwork required to complete the tax exemption of San Francisco Arts & Athletics is still in process at the government level, all donations should be made payable to the San Francisco Tavern Guild Foundation to be tax-deductible.

For the convenience of callers, there is a 24-hour answering machine on the main Gay Olympics telephone number, (415) 861-8282.

For special information about the women's outreach efforts, which have achieved growing success—including women participants in every sport—call Sports Co-chair Alita Rosenfeld at (415) 472-1309.

(end)

(Prepared as a public service by
Edwards & Associates Public Relations,
(415) 832-6677)

CALENDAR LISTINGS

1) First International GAY OLYMPIC GAMES
Aug. 28 through Sept. 5
San Francisco, California
USA

2) Gay Cultural Week
(concurrent with Gay Olympic Games; calendar for visitors to Bay Area)

3) Arrival in San Francisco
of Gay Olympic Games'
NATIONAL TORCH RUN
Aug. 22, 1982 via Golden Gate Bridge (time to be announced)

4) News Briefing and
Pre-Games Press Reception
Thursday, Aug. 26, 1982,
4 to 8 p.m.
141 Albion St. (Albion Hall)
between Valencia, Guerrero,
16th and 17th,
San Francisco

All Working News Media People Welcome

5) Celestial Lords: A
Megasensory Science Fiction
Spectacular
August 27, 28, 29, Evenings
Galleria Design Center
Call 861-1167 for more information. (Official entertainment event of the Gay Olympics; independent production)

6) Opening Ceremonies:

Gay Olympic Games
Saturday, Aug. 28, 1982, 1 p.m.
Kezar Stadium, Golden Gate Park
San Francisco

7) Closing Awards Ceremonies

Gay Olympic Games
Sunday, Sept. 5, 1982, 12 noon
Kezar Stadium

For more information on any events and latest schedules, call (815) 861-8282, 0280 or 0882.

• • • •

GAY OLYMPIC GAMES

[THREE-RING LOGO]

May 27, 1982

Dear Editors and News Directors:

A historic sporting event and cultural celebration involving the world's lesbian and gay community is approaching August 28 through September 5, 1982. It is not only the first Gay Olympic Games, it is an opportunity for human rights advocates of all sexual preferences to help us better inform the general public on the vitality, variety and versatility of the gay community.

We need your help to tell an important story. We offer you our help and strong encouragement in this important process.

The news releases and other information materials prepared for the working press and electronic news media may not be as complete and as brightly written as the reports you write and often publish, but we hope they will give you some good ideas about how to begin coverage of the Gay Olympic Games.

We will continue to gather and prepare current information for your use, and we look forward to hearing from you as our international event approaches and unfolds.

Please note that the National Torch Run, a symbolic and meaningful prelude to the Gay Olympics, departs New York City Sunday, June 13 and arrives in San Francisco August 22. Along their route, up to 2,000 runners, cyclists and others will be threading goodwill, information and important fund-raising events into a kind of new, homespun weave to be part of our social fabric.

If you live or work anywhere near the torch route, we hope you can develop a significant local feature.

If your publication or station plans to cover the Gay Olympic Games in San Francisco, please let us know so we can plan to assist you. If you cannot provide direct coverage, we will do our best to keep you informed by mail. Please let us know.

Thank you in advance for your efforts in reporting a grassroots project of many communities of the world. With your help, we are confident that many of our common social goals and objectives will be realized.

/s/ Tom Waddell
Tom Waddell, M.D.
Chairman, Organizing Committee

[EXHIBIT BB TO WADDELL DECLARATION]

[See *ante* p. 100]

[Emblem with runner and:]

10th Annual Armenian Olympics 1978
Hayward California

[EXHIBIT N TO KLINE DECLARATION]

[See *ante* p. 216]

[United States Olympic Committee letterhead]

June 16, 1983

Muscular Dystrophy Association
1713 S. Avondale
Amarillo, TX 79106

Re: *Bar Olympics*

Dear Sirs:

This office has recently become aware of a one-day sports competition entitled "Bar Olympics" scheduled for Sunday, August 15, 1983 at Sam Houston Park, which you are sponsoring. You are also offering a "Bar Olympics t-shirt" for said event. We must bring to your attention the fact that federal legislation precludes your use of the word "Olympic," any derivative thereof, other related terminology, as well as use of specific logos and emblems, including the five interlocking Olympic rings. Public Law 95-606 (36 USC 371), a copy of which is enclosed, reserves exclusive use of Olympic language and insignia for the United States Olympic Committee.

We strongly support the goals and objectives of Muscular Dystrophy, both at the local and the national levels. However, we do not feel that this is an appropriate method of fund-raising.

We are sure that you would not intentionally violate the federal law and we hasten to bring the enclosed excerpt to your attention. Accordingly, we must ask that you refrain from using any Olympic reference or rings regarding your events, competitions, t-shirts, other apparel, advertising, or other material under your control.

Please indicate your written compliance with the law at your earliest convenience.

With all good wishes, I remain,

Sincerely,

F. DON MILLER

FDM/ghm
Enc.
CERTIFIED MAIL
RETURN RECEIPT REQUESTED
cc: Richard G. Kline, Esquire
Vaughn Walker, Esquire

Mr. Brian Porter
Anheuser-Busch
One Busch Pl.
St. Louis, MO 63118

Muscular Dystrophy Association
810 Seventh Avenue
New York, NY 10019

[EXHIBIT O TO KLINE DECLARATION]

[See *ante* p. 217]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 83-539

UNITED STATES OLYMPIC COMMITTEE,
Plaintiff,

v.

MARCH OF DIMES BIRTH DEFECTS FOUNDATION,
Defendant.

[Filed July 1, 1983]

FINAL JUDGMENT

It appearing to the court that plaintiff, United States Olympic Committee, and defendant, March of Dimes Birth Defects Foundation, have agreed to entry of a Final Judgment as a full and complete adjudication of this action, it is therefore ORDERED, ADJUDGED and DECREED THAT:

1. The court has jurisdiction over defendant and the subject matter of this action for the relief being sought.

2. March of Dimes Birth Defects Foundation, its affiliated constituents and related organizations as well as successors or assigns, officers, representatives, agents and employees are permanently enjoined, pursuant to 36 U.S.C. § 380, from using or causing to be used "OLYM-

PIC", "OLYMPICS", or any diminutive thereof, without the consent of the United States Olympic Committee, for the solicitation of contributions or to promote, authorize, sponsor, or endorse any type of competition or activity.

3. Nothing herein will preclude defendant from entering into an agreement with the United States Olympic Committee to permit lawful use of "OLYMPIC" or "OLYMPICS".

4. Except as expressly provided herein, all other claims in this action are dismissed.

5. Each party shall bear its own costs and attorneys fees.

/s/ [Illegible]
United States District Judge
July 5, 1983

AGREED:

UNITED STATES OLYMPIC COMMITTEE

By /s/ P. Don Miller
P. DON MILLER
Executive Director
Dated 6/23/83

AGREED:

MARCH OF DIMES BIRTH DEFECTS FOUNDATION

By /s/ [Illegible]
Title: President
Dated 6/13/83

[EXHIBIT P TO KLINE DECLARATION]

[See *ante* p. 217]

[Names of counsel omitted]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-83-2697 RG (Gx)

UNITED STATES OLYMPIC COMMITTEE;
LOS ANGELES OLYMPIC ORGANIZING COMMITTEE,
Plaintiffs,

vs.

ADELMAN ENTERPRISES, INC., a corporation doing business as MURRAY'S TICKET AND TRAVEL BUREAU,
Defendant.

CONSENT JUDGMENT

This matter having come before the Court, Honorable Richard A. Gadbois, Jr., District Judge, presiding, on the complaint of plaintiffs, and it appearing to the Court that plaintiffs and defendant have reached agreement to resolve their differences by the entry of this judgment, and plaintiffs and defendant having agreed that entry of this judgment shall constitute a full, complete and final adjudication of this action, and the Court having reviewed this judgment, and it appearing to the Court that this judgment is in accordance with the findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Adelman Enterprises, Inc. and its owners, representatives, directors, officers, agents,

employees and all persons acting in concert or participating with them (all hereinafter referred to collectively as "Murray's"), be and hereby are permanently enjoined from doing any of the following:

1. Using or causing to be used in any form whatever, for the purpose of trade, or to induce the sale of any goods or services, the "Star in Motion" design (as illustrated by Exhibit "A" hereto), the "Olympic Symbol" of five interlocking rings (as illustrated by Exhibit "B" hereto), or any colorable imitation or simulation of either of them, either alone or in association with any other designation;

2. Making any statement or representation tending to cause others to believe that Murray's is in any way connected with plaintiffs, or either of them, or with any Olympic activity; and

3. Falsely representing to the public or to any person that Murray's has, or has a contractual right to obtain, tickets to any events (including opening and closing ceremonies) of the 1984 Summer Olympics (hereinafter collectively referred to as "Olympic Events").

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Adelman Enterprises Inc. shall do each of the following:

4. Within five working days following the entry of this Consent Judgment, send by first class mail a letter, in the form attached hereto as Exhibit "C" (hereinafter referred to as the "Letter"), to each and every person from whom it has received a deposit purportedly for the purchase of tickets to any Olympic Event;

5. Send the Letter, within five working days of the receipt of any deposit which it may receive in the future where such deposit is purportedly for the

purchase of tickets to any Olympic Event and is accompanied by the purported "1984 Priority Olympic Order Form" (a copy of which is attached hereto as Exhibit "D"), to each and every such future depositor;

6. Refund within five working days of receipt of any request for such refund, all deposits the refund of which is requested by any person to whom the Letter is required to be sent by this Consent Judgment;

7. Deliver to plaintiffs' counsel for destruction or other disposal, within ten working days of the date of this Consent Judgment, all brochures, pamphlets, advertisements and other written materials which exhibit or display the Olympic Symbol or the Star in Motion; and

8. File with the Court and serve on plaintiffs' counsel, thirty days following the date of this Consent Judgment, a report in writing under oath setting forth the manner and form in which it has complied with this Consent Judgment (the names and addresses of persons to whom Adelman Enterprises Inc. sends the Letter pursuant to paragraphs 4 and 5 hereof, and to whom it makes refunds pursuant to paragraph 6 hereof, shall be included in such written report, but may be appended to it as a separate attachment which need not be served on plaintiffs); and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Adelman Enterprises Inc. shall immediately serve a copy of this Consent Judgment on all of its officers, directors, agents, servants, successors and assigns, and shall serve on plaintiffs' counsel thirty days following the date of this Consent Judgment a statement listing all persons so served; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Adelman Enterprises Inc. pay and deliver to plaintiff Los Angeles Olympic Organizing Committee the sum agreed upon by and between counsel for the parties in settlement of all claims against it.

IT IS SO ORDERED this 23rd day of May, 1983.

/s/ Richard A. Gadbois, Jr.
RICHARD A. GADBOIS, JR.
United States District
Court Judge

APPROVED AS TO FORM
AND CONSENT:

ADELMAN ENTERPRISES INC.

By /s/ Ronald Arak
Ronald Arak, Attorney at Law
14651 Ventura Boulevard, Suite 350
Sherman Oaks, California 91403

DATED: May 18, 1983

• • • •

[EXHIBIT Q TO KLINE DECLARATION]

[See *ante* p. 217]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-969

UNITED STATES OLYMPIC COMMITTEE,
Plaintiff,

v.

INTERNATIONAL FEDERATION OF BODY BUILDERS, *et al.*,
Defendants.

ORDER

This matter comes before the court on plaintiff's motion for a contempt judgment. Plaintiff, United States Olympic Committee ("Olympic Committee") asks this court to find that defendants have violated the court's order and final judgment of June 13, 1983 and to find defendants in contempt of that order. In addition, plaintiff requests that this court award its various forms of relief.

Discussion

This court's final judgment of June 13, 1983 enjoined defendants International Federation of Body Builders ("IFBB") and others from using to promote the sale of goods, or to promote any athletic competition, various Olympic symbols, the words "Olympic", "Olympia", "Olympian", or any colorable imitation or simulation thereof. The judgment permitted the IFBB to use the term "Mr. Olympia" as a service mark to promote and conduct its annual professional bodybuilding contest.

In addition to enjoining the defendants from using symbols and words identified with the Olympic Committee, the judgment enjoined defendants from "making any statement or representation which refers to or uses any of the aforementioned terms or symbols . . . in such a way as to tend to cause a mistake or to deceive others into believing that any defendant or any of their services or products are in any way associated with, approved, sponsored or otherwise affiliated [with the plaintiff]." Judgment, ¶ 2.

On June 23, 1983, plaintiff brought this motion for contempt. Plaintiff had monitored the publications of the IFBB and the advertisements of Weider Health and Fitness and alleges that defendants have engaged in a number of violations of the injunction. Plaintiff alleges, *inter alia*, that defendants have used the term "Olympian", "Olympic", and "Mr. Olympia" in contexts that violate this court's order and judgment, and that defendants continue to publish articles that lead readers to believe that defendants or their products are associated with the Olympic Committee. The court has reviewed plaintiff's motion, and the exhibits attached thereto, as well as defendants' opposition and exhibits. Additionally, on July 21, 1983, this court held a hearing on the motion for contempt, and heard argument directed at each alleged violation of the injunction. The court shall address each of the allegations below.

1. Plaintiff argues that defendants have refused, despite repeated requests from the Olympic Committee, to deliver infringing labels, signs, prints, packages or other items bearing the Olympic terms or symbols to the Committee as ordered by this court's final judgment. Defendants represent, however, that they have delivered all such materials to the Committee for destruction, and that they retain no material in violation of this court's order. Because of plaintiff's skepticism, and this court's belief that

compliance with this provison must be assured, it is, by the court, this 8th day of August, 1983,

ORDERED that defendants shall make available for inspection by plaintiff all printing, publishing, distribution, or storage facilities used by defendants in preparing any of the items set forth in this court's final judgment. In addition, defendants shall make available for interview, at a mutually convenient time and place, any official, technician, or other employee of the defendants responsible for, or without knowledge of, the production, distribution, or storage of any of the items in question. Defendants shall cooperate with plaintiff's effort to ensure compliance with this court's order, and with plaintiff's efforts to ensure that all materials set forth in that order and judgment are delivered to the plaintiff for destruction.

In addition, it appearing to the court that defendants have failed to deliver the infringing materials to the Olympic Committee as required by this order, or within a reasonable time following the date set forth in this order, it is, by the court

ORDERED that defendants shall reimburse the Olympic Committee for the costs of bringing this motion for contempt, including the costs of monitoring and investigating defendants' actions and publications to detect noncompliance, and reasonable attorneys' fees.

2. Plaintiff argues that defendants are continuing to promote for sale in the United States, certain food supplement and vitamin products bearing the Olympic designation "Olympian." The court finds that defendants violated the terms of the injunction when it distributed within the United States advertising and promotional material for "Olympian" products sold by the Weider organization. It is, therefore, by the court,

ORDERED that defendants shall cease and desist from using the term "Olympian" for the purpose of trade, and

to induce the sale of goods or services in the United States.

3. Plaintiff argues that defendants have violated the terms of the injunction by promoting for sale a "Mr. Olympia" barbell/dumbbell set. This court agrees that any trade usage of the term "Mr. Olympia" violates the injunction. It is, therefore, by the court,

ORDERED that defendants shall, except as provided in ¶ 5 of this Order, cease and desist from using the term "Mr. Olympia" for the purpose of trade to induce the sale of goods.

4. Plaintiff also argues that defendants' sale and promotion of an "Olympic" barbell/weight training set violates the terms of the injunction. The court finds that defendants' use of the term "olympic" to describe or promote a barbell or other weight training instrument violates the injunction. If defendants' weight training sets are not manufactured to Olympic specifications, this court cannot permit the term "olympic" to be used to describe such equipment. Accordingly, it is, by the court,

ORDERED that defendants shall cease and desist from using the term "olympic" to describe any weight training equipment unless such equipment is manufactured in accordance with Olympic specifications.

5. Plaintiff also argues that the use of the term "Mr. Olympia" as an endorsement to induce the sale of Weider Health and Fitness food supplements violates the terms of the injunction. Plaintiff concedes that former Mr. Olympia contestants may properly endorse Weider products, but argues that the use of the term "Mr. Olympia" in those advertisements without immediate reference to an individual contestant is a violation of the injunction. This court agrees. The court did, of course, permit the IFBB to use the term "Mr. Olympia" as a service mark to promote its professional bodybuilding contest. The

court finds that the endorsements of commercial products by former, named Olympia contestants is a permissible and non-infringing use of the word "Mr. Olympia". However, such use is a reasonable extension of the use of "Mr. Olympia" as an identification and service mark only if the phrase is used as an endorsement by a specific, named, Mr. Olympia contestant. Defendants may not, consistent with this court's judgment and findings, use the term "Mr. Olympia," or refer to "the Mr. Olympia", or generically to "the Mr. Olympia winners" in the text or body of any advertisement, nor may defendants otherwise link the product to the phrase "Mr. Olympia" in any fashion except as set forth above.[1]

Accordingly, it is, by the court

ORDERED that defendants shall cease and desist the use of the term "Mr. Olympia" to promote the sale of any product, except that defendants shall be permitted to use the phrase "Mr. Olympia" as an endorsement, when such endorsement is made by a former "Mr. Olympia" contestant.

6. Plaintiff also alleges that defendants' use of the olympic torch as part of the word "Olympia" for the purpose of inducing the sale of goods violates the final judgment in this case. Defendants concede this violation. Accordingly, it is, by the court,

ORDERED that defendants shall cease and desist from using the olympic torch, or any other olympic symbol, to induce the sale of goods or services.

---

[1] An example of an advertisement with partially infringing copy is found at plaintiff's Ex. G at 6. In this advertisement, the endorsement by Frank Zane, a former "Mr. Olympia" winner, reflects a proper use of the phrase "Mr. Olympia." However, the bold heading entitled, "Here's An Advantage Shared by the Mr. Olympias," as well as the bottom caption, "An Advantage Shared by the Mr. Olympias" are trade usages of the phrase which cannot be characterized as endorsements. Accordingly, they are improper.

7. Plaintiff further argues that defendants' use of the word "Olympia" to describe its professional bodybuilding contest without the prefatory title of "Mr." violates the final judgment. Plaintiff is referring to an article in the April and May editions of *Muscle & Fitness* magazine. The article described the 1982 "Mr. Olympia" contest, yet conspicuously and consistently omitted the word "Mr." from its description of the contest. This court finds that defendants' journalistic shorthand for the contest unnecessarily confuses defendants' bodybuilding competition with the activities of the Olympic Committee. Such misleading use of the term "Olympia" is clearly prohibited by the terms and language of the final judgment entered in this case. Accordingly, it is, by the court,

ORDERED that defendants cease and desist use of the term "Olympia" to describe its body building contest, without the courtesy prefix of "Mr."

8. Plaintiffs also argue that an article entitled "Bound for the Olympics" found in the August, 1983 edition of *Flex* magazine violates the injunction because the title of the article and its contents allegedly contain statements that would tend to mislead readers of the publication to believe that the IFBB is associated with the Olympic Committee. This court finds that the factual, accurate account of the IFBB's ongoing efforts to gain Olympic affiliation is neither deceptive nor misleading.

9. This court finds that defendants' efforts to purge its publication of infringing references to the Olympic Committee have been imperfect. Defendants maintain that some of the violations detected by plaintiffs were minor, and incidental, and will be not repeated. Nevertheless, plaintiff's monitoring efforts have detected numerous violations of the injunction, and plaintiff cannot be expected to bear the cost of monitoring compliance with this Order indefinitely. Accordingly, this court again orders defendants to take all reasonable steps to ensure compliance

with this court's final judgment, and with this Order. Upon a finding that the defendants have engaged in further violations of this court's orders, this court shall consider imposing more serious sanctions.

/s/ Thomas A. Flannery
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 81-0969
Judge Flannery

UNITED STATES OLYMPIC COMMITTEE,
Plaintiff,

v.

INTERNATIONAL FEDERATION OF
BODY BUILDERS, *et al.*,
Defendant.

[Filed Jan. 13, 1983]

JUDGMENT

This matter having come before the court on the amended Complaint of the plaintiff and the answers of the defendants; and the trial of this matter having been to the court commencing on July 12, 1982, and the court having heard the argument of the parties on August 30, 1982, and the court having reviewed all the evidence and legal memoranda and written submissions of the parties; and the court having made findings of fact and conclusions of law pursuant to F.R.C.P. 52, filed December 1, 1982, it is hereby:

ADJUDGED, DECREED and ORDERED that Defendants be and each of them hereby are Permanently Enjoined from:

1) Using or causing to be used in any form whatever for the purpose of trade, to induce the sale of any goods

or services, or to promote any theatrical exhibition, athletic performance, or competition, the Olympic symbol of interlocking rings, regardless of numbers; the representation of a torch or flame; the words "Olympic," "Olympia," "Olympian," or any colorable imitation or simulation thereof, either alone or in combination: Provided, however, that defendant IFBB may use and register "Mr. Olympia" as a service mark for the conduct of an annual professional bodybuilding, or muscle beauty contest of the type previously held by defendanut I.F.B.B.

2. Making any statement or representation which refers to or uses any of the aforementioned terms or symbols or the name of the United States Olympic Committee in such a way as to tend to cause a mistake or to deceive others into believing that any defendant or any of their services or products are in any way associated with, approved, sponsored or otherwise affiliated in any fashion with the United States Olympic Committee, the International Olympic Committee or with any Olympic activity.

FURTHER ORDERED that all labels, signs, prints, packages, wrappers, recepticles, advertisements, wherever appearing, or other items bearing or reproducing any Olympic terms or symbols, or any colorable imitation or simulation thereof, shall be withheld from sale or distribution, wherever located, commencing January 26, 1983 and together with all plates, molds, matrices or other means of making the same, shall be delivered to plaintiff or plaintiff's representatives for destruction or other disposal, on or before February 12, 1983, at a location to be designated by Plaintiff.

FURTHER ORDERED that Defendants shall immediately serve a copy of this Order upon all their officers, agents, consignees except magazine consignees, and I.F.B.B. members or employees and shall serve upon Plaintiff February 12, 1983, a certified statement listing all persons so served.

FURTHER ORDERED that the court having reviewed, *de novo*, the decision of the Trademark Trial and Appeal board regarding the service mark "MR. OLYMPIA", the court does sustain that decision and, accordingly, judgment is entered in favor of the defendant, International Federation of Body Builders, on the issue of registration of the service mark "MR. OLYMPIA" for a professional muscle beauty contest.

FURTHER ORDERED that the plaintiff's prayer for damages, accounting, and attorneys fees be, and the same is hereby denied.

FURTHER ORDERED that plaintiff shall submit a bill of costs within thirty (30) days of entry of this Order.

IT IS SO ORDERED this 13th day of January, 1983.

/s/ Thomas A. Flannery
United States District Judge

[EXHIBIT R TO KLINE DECLARATION]

[See *ante* p. 217]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-3239

UNITED STATES OLYMPIC COMMITTEE
1750 East Boulder Street
Colorado Springs, Colorado 80909
(303) 632-5551

Plaintiff,

v.

MILLSPORT INC.
437 Madison Avenue
New York, New York 10022

SPORT GRAPHICS, INC.
1655 Elmwood Avenue
Cranston, R.I. 02910

and

INTELICENSE CORPORATION SA
Case Postale 215
1211 Geneva 26
Switzerland

Defendants.

[Filed Mar. 10, 1983]

FINAL JUDGMENT

It appearing to the court that the parties United States Olympic Committee and defendant Millsport Inc. have mutually agreed to a settlement of the action and have consented to entry of a Final Judgment as a full and complete adjudication of this action as to Millsport, it is therefore, ORDERED, ADJUDGED and DECREED that:

1. The court has jurisdiction over defendant Millsport and the subject matter of this action for the relief being sought.

2. Millsport Inc., including its successors or assigns, officers, representatives, agents, servants, employees, and any company owned or controlled by Millsport be and hereby is permanently enjoined pursuant to 36 U.S.C. § 380 from using or causing to be used in any form, without the consent of the United States Olympic Committee, for the purpose of trade, to induce the sale of any goods or services in the United States, the Olympic symbol consisting of five interlocking rings or any colorable imitation or simulation thereof.

3. Notwithstanding paragraph 2 hereof, if a Final Judgment is entered against the United States Olympic Committee by the United States District Court for the District of Columbia in Civil Action 82-3239, the provisions of Paragraph 2 of the Final Judgment permanently enjoining use by Millsport Inc. of the Olympic symbol shall be of no further force and effect.

4. Nothing herein will be deemed to deny Millsport the right to enter into an agreement with a licensee or permitee of the United States Olympic Committee which permits Millsport to utilize the Olympic symbol for the purposes of trade, to induce the sale of any goods or services in the United States.

5. Except as expressly provided herein, all other claims in this action are dismissed as to Millsport Inc., without prejudice to the United States Olympic Committee seeking further different relief from any other defendant.

6. Each party shall bear its own costs and attorneys fees.

/s/ [Illigible]
United States District Judge

AGREED

UNITED STATES OLYMPIC COMMITTEE

By /s/ Richard G. Kline
RICHARD G. KLINE
Attorney for Plaintiff
Beveridge, DeGrandi & Kline
1819 H Street, N.W.
Washington, D.C. 20006
(202) 659-2811

AGREED

MILLSPORT INC.

By /s/ Leonard Orkin
LEONARD ORKIN
Attorney for Defendant Millsport Inc.
Davis & Gilbert
850 Third Avenue
New York, New York 10022
(212) 593-0707

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-3239

UNITED STATES OLYMPIC COMMITTEE,
Plaintiff,

v.

MILLSPORT INC.,
SPORT GRAPHICS, INC.,
INTELICENSE CORPORATION SA,

and

INTERNATIONAL SPORTS
MARKETING, INC.,
Defendants.

[Filed May 10, 1983]

FINAL JUDGMENT

It appearing to the court that plaintiff United States Olympic Committee and defendant Sport Graphics, Inc. have mutually agreed to entry of a Final Judgment as a full and complete adjudication of this action as to Sport Graphics, Inc., it is therefore, ORDERED, ADJUDGED and DECREED THAT:

1. The court has jurisdiction over defendant Sport Graphics, Inc. and the subject matter of this action for the relief being sought.

2. Sport Graphics, Inc., including its successors or assigns, officers, representatives, agents, servants, em-

ployees, and any company owned or controlled by Sport Graphics, Inc. be and hereby is permanently enjoined pursuant to 36 U.S.C. § 380 from using or causing to be used in any form, without the consent of the United States Olympic Committee, for the purpose of trade, to induce the sale of any goods or services in the United States, the Olympic symbol consisting of five interlocking rings or any colorable imitation or simulation thereof.

3. Nothing herein will be deemed to deny Sport Graphics, Inc. the right to enter into an agreement with a licensee or permittee of the United States Olympic Committee which allows Sport Graphics, Inc. to lawfully use the Olympic symbol for the purposes of trade, to induce the sale of any goods or services in the United States.

4. Except as expressly provided herein, all other claims in this action are dismissed as to Sport Graphics, Inc., without prejudice to the United States Olympic Committee seeking further or different relief from any other defendant.

5. Each party shall bear its own costs and attorneys fees.

/s/ [Illigible]
United States District Judge

AGREED

UNITED STATES OLYMPIC COMMITTEE

By /s/ Richard G. Kline
RICHARD G. KLINE
Attorney for Plaintiff
Beveridge, DeGrandi & Kline
1819 H Street, N.W.
Washington, D.C. 20006
(202) 659-2811

AGREED

SPORT GRAPHICS, INC.

By /s/ Branko Stupar
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910 - 16th Street, N.W.
Washington, D.C. 20006
(202) 466-8585

[EXHIBIT A TO DUNLAP DECLARATION]

[See *ante* p. 247]

[Photograph of runners omitted in printing]

Thurs., July 29, 1982

San Francisco Chronicle

Art Rosenbaum

A Victory
For the
Gay Olympics

THE GAY OLYMPICS, to be held in San Francisco August 28-September 5, has already won its first medal. By refusing to vanish, or by just remaining in a holding pattern, it has blunted a threat of legal action from the United States Olympic Committee.

The USOC, and the International O.C., are always annoyed when upstarts try to steal the sacred Olympic word, the five-ring emblem or the Games format including opening and closing ceremonies. "Olympic" is not only an identification, but is a highly saleable word; worldwide TV rights for the 1984 show in Los Angeles will run well above $500 million.

The S.F. Gay Olympics wasn't getting much notice in the straight press until the heavyweights at Colorado Springs, U.S. Olympic headquarters, decided to take it on with a strong letter and a release to the media.

Castro Street was delighted. The G.O. attorney, Mary Dunlap, immediately dispatched a letter citing the First and Fifth Amendments plus a warning that the USOC could be in for another legal skirmish such as the one lost to a group in the East calling itself STOP, for Stop the Olympic Preview.

Nothing more has been heard, or is expected. For the Gay Olympics people, it's good news and bad news. They're happy to overcome an objection to their show; they're sad because they're not getting any national press. Maybe the USOC has decided, wisely, that every knock is a boost in this case. Maybe the USOC expects this annoying gadfly to die a natural death.

The inventor, architect and all-year worker for the Gay Olympics is a medical doctor, Tom Waddell, who finished sixth in the 1968 Olympic Games decathlon, in Mexico City. And here's the shocker (to some). If he had his way, he'd remove the word "Gay" from this competition and the entire community or movement.

"I don't like labels," he explained. "A great many of us want gay returned to it's dictionary meaning—keenly alive and exuberant, having high spirits, being happily excited. But it is difficult to change an impression of the Gay Olympics. I'd like to change it to People's Olympics. Please believe that it will be an athletic competition and a means of self-fulfillment for everyday people doing everyday things."

THE EVERYDAY PEOPLE will number 1600 from 100 American cities and 14 nations, it's claimed. It will be proclaimed Gay Olympics Week and will be held on various municipal grounds in and around San Francisco. Reportedly, a request to use California Memorial Stadium for the opening ceremony was turned down. No reason. Unavailable.

The sponsors and promoters of Gay Olympics plunge ahead, they say, in an effort to change the impression. The entrants will run and jump and throw, striving to succeed. Hot dogs, in the athletic sense and locally, in the gay sense, will not be welcomed.

One wondered out loud, "Suppose a competitor shows up wearing heavy make-up, a wild wig, a skin-tight gown

and high heeled shoes, and makes a play toward the crowd? What then?"

Dr. Waddell sounded firm, "We will have adequate security. That person will be thrown out. There will be nothing suggestive here . . . no flags, no symbols, no graffiti. We will have a strict dress code."

THE GAY OLYMPICS is an open event; that is, anyone of any conviction may enter, provided that person is reasonably qualified to compete. Straights will be there, including at least one 49er. Politicians will be there, for sure . . . there are a lot of votes there.

It is expected The Athletic Congress (replacing the AAU as the power in trackdom) will sanction the Gay Olympics, and regular TAC officials will volunteer their services. Of itself, that would be a coup.

Even a backyard Olympics costs money. Dr. Waddell and friends have motored around the country telling the news to whomever will listen, and most of the media won't. Many fund-raising events have put $100,000 in the treasury, or it was in the treasury until spent for the many necessities.

This is not Olympian in the dollar sense. It won't cost millions or billions. Visiting competitors will stay in private residences. A computer system will match visitors with hosts.

"After all," said Dr. Waddell, "we are a hospitable community."

[EXHIBIT A TO MOTION FOR AWARD OF ATTORNEYS' FEES]

[See *ante* p. 288]

UNITED STATES DISTRICT COURT
E. D. VIRGINIA

No. 82-276-A

UNITED STATES OLYMPIC COMMITTEE

v.

UNION SPORT APPAREL, *et al.*

Decided Jan. 24, 1983

---

* * * *

Bryan, District Judge.

Findings Of Fact And
Conclusions Of Law
Pursuant To Rule 52(A)

Findings of Fact

1. Defendant Union Sport Apparel was in the business of marketing apparel and related accessories, displaying a logo of three interlocking rings displayed with the letters "U.S.A.". [Altshuler dep. at 32-33, Pl. Ex. 55 A & B]

2. Defendant Union Sport Apparel was advised by its attorneys in 1979 "they had some exposure to claims by the Olympic organizations" based on the Olympic Committee's registered mark for clothing, including five interlocking rings, and, further, that "the bottom line on your use of the rings is that it may subject you to suit by the U.S.O.C. • • •" [Altshuler dep. Ex F]

3. Defendant Union Sport Apparel's awareness of the Olympic Committee's rights continued. In April 1980, Union Sport's attorney was advised that the Olympic Committee had already opposed another three-ring design used on appeal. [Altshuler dep. Ex. O] The Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office sustained the Olympic Committee's opposition to registration of the mark. [Pl. L. 59]

4. Defendant Union Sport's attorney was further advised in April 1980 that the Amateur Sports Act "was intended to tighten significantly the rules relating to use by third parties of the Olympic symbols • • •." [Altshuler dep. O]

5. In May 1980, defendant Benjamin Altshuler purchased all of the stock in Union Sport Apparel . [Altshuler dep. at 17-18]

6. On February 12, 1961, defendant Union Sport Apparel assigned to defendant Altshuler "all of its rights and title in and to" the three-ring "U.S.A." logo and the federal applications to register that logo. [Def. Ex. 12, Altshuler dep. Ex. C]

7. On May 29, 1981, defendant Altshuler personally assigned to defendant Umezaki an undivided one-half interest in the Union Sport Apparel three-ring "U.S.A." logo and the attendant applications to register. [Altshuler dep. Ex. C]

8. On June 1, 1981, defendants Altshuler and Umezaki entered into an agreement to market apparel bearing the three-ring "U.S.A." logo. [Altshuler dep. Ex. K]

9. Union Sport Apparel's financier, James Talcott Factors, required defendant Altshuler to make himself personally liable for loans made for the operations of Union Sport Apparel. [Talcott dep. Ex. I-3]

10. James Talcott Factors was under the mistaken impression, at least at one time, that the Union Sport Apparel three-ring "U.S.A." logo was an Olympic mark. [Talcott dep. at H-7, H-8]

11. Defendant Federated Department Stores expressed concern to defendant Union Sport Apparel that the Union Sport Apparel three-ring "U.S.A." logo would conflict with the U.S. Olympic Committee's rights. Defendant Federated proceeded to purchase goods bearing the logo only in light of Union Sport Apparel's agreement of indemnification. [Van Meurs dep. Ex. 2, 3]

12. Defendant Union Sport Apparel made sales of apparel and accessories bearing the three-ring "U.S.A." logo in the following amounts:

13. a. The cost of goods sold for the period June 1979-October 1980 was $1,504,988, or 79% of the total net sales for that period of $1,904,414.

b. The cost of goods sold for the remaining period November 1980-January 1982 is unkown, there being no documents available from which such a figure may be derived. However, multiplying the total net sales for that period of $1,727,377.45 by 79%, an estimated cost of goods sold of $1,364,628.19 is derived from the period November 1980-January 1982.

c. Adding the cost of goods sold for the two periods, an estimated total cost of goods of $2,869,616.19 may be used to calculate gross profits by subtracting that figure from the total net sales of $3,631,791.45.

14. Therefore, using the best data available to the court, the defendants' total gross profits from sale of

products bearing infringing Olympic logos was $762,175.26, derived by subtracting the total cost of goods sold from the total net sales. [3,631,791.45 − 2,869,616 = 762,175.26]

Conclusions of Law

Defendants have Violated The Amateur Sports Act of 1978

1. The Amateur Sports Act of 1978, P.L. 95-606, 92 Stat. 3045, created a new independent cause of action, by which the U.S. Olympic Committee could protect the distinctiveness, value and marketability of its various Olympic designations. [In support of Conclusions 1 through 8, see generally, United States Olympic Committee v. I.F.B.B. et al., Civ. Act. No. 81-969 (D.D.C. Dec. 1, 1982)]

2. The Olympic Symbol protection provision of the Act, 36 U.S.C. § 380, protects the Olympic Committee from any misuse of Olympic designations, or simulations of such designations, regardless of the particular goods or services on which the designates are used. The scope of protection afforded by the Olympic Symbol protection provision is broader than trademark protection, and is more akin to that of an anti-dilution statute.

3. While the Olympic Symbol Protection statute serves some of the same purposes as the Federal Trademark Act, its direct purpose as to benefit the public by ensuring that any use of an Olympic designation is authentic.

4. Subsection (b) of the Olympic symbol protection statute is Congress's recognition, endorsement, and express authorization of the Olympic Committee's corporate participation program. It provides that the Olympic Olympic Committee may authorize its contributors and suppliers to use Olympic designations in advertising that the "contributions, goods, or services were donated, supplied, or furnished to or for the use of, approved, se-

lected, or used by the [Olympic Committee] or United States Olympic or Pan-American team or team members."

5. The use of all Olympic designations has been reserved for the exclusive use of the Olympic Committee. If unauthorized users, such as defendants herein, were allowed to continue the use of any Olympic designations or simulations thereof in connection with their products and services, such misuse would conflict with the Olympic Committee's right to authorize its contributors and suppliers to use Olympic designations in connection with their products and services. Such unauthorized use would frustrate the purpose of subsection (b), and could preclude the Olympic Committee from future expansion of or even continuation of its use of Olympic designations such as the Olympic emblem of "U.S.A." and rings.

6. Defendant's use of Olympic designations and simulations thereof, such as a plurality of interlocking Olympic rings, regardless of number, both with the letters "U.S.A." violates the Olympic symbol protection statute. 36 U.S.C. § 380.

7. Although the Amateur Sports Act created a cause of action independent of the Lanham Act, the Olympic Symbol Protection provision affords the Olympic Committee the same kinds of remedies available under the Lanham Act.

8. In order to effectuate the purposes of the Amateur Sports Act and enable the Olympic Committee to carry out its Congressional mandate, the Olympic Committee should be awarded, in accordance with the remedies provided for in the Act:

a. A permanent injunction preventing all defendants from using any designations or simulations that are confusing similar to the family of related Olympic designations in violation of the Amateur Sports Act.

b. All damages incurred by the Olympic Committee by defendants' acts in violation of the statute, which amount may be trebled.

c. All profits gained by defendants by their acts in violation of the statute.

d. Its costs and attorneys fees in prosecuting this action.

e. An order requiring defendants to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of defendants displaying any Olympic designation or simulations thereof, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices and other means of making the same.

9. Requiring use of the Olympic Committee's funds to enforce the statute against those who might violate 36 U.S.C. § 380, diminishes the amount of funding available to implement the Olympic Committee's athletic programs. The public interest would best be served by having the costs necessary for enforcement of the Olympic Symbol Protection statute be borne by those who violate that statute, rather than by the public's contributions. Particularly where, as here, those expenses were caused by a recalcitrant defendant without a substantial defense. Thus, in order to allow the Olympic Committee to enforce the statute as contemplated by Congress, while at the same time maintaining its development programs, attorneys fees should be granted liberally under the statute. Such an award of attorney fees is particularly appropriate where, as here, the violation has been wilful and with disregard for the Olympic Committee's preemptive rights.

10. Plaintiff's Olympic designations have been used on a wide variety of consumer products. Thus whenever a consumer sees any Olympic designations, or simulations thereof on a product or advertisement, the consumer is

likely to believe that the goods are in some way connected with the Olympic Committee or its Olympic activities. The widespread use and value of plaintiff's Olympic designations "creates the opportunity for others to ride on the goodwill of [the Olympic Committee] in the effort to attract customers to goods and services which may be thought by consumers to be in some way associated with [the Olympic Committee]" James Burrough Ltd., supra, 540 F.2d at 277, 192 USPQ at 564. See also Grotrain, Helfferich, Schulz Th. Steinweg Nachf. v. Steinway & Sons, 523 F.2d 1331, 1342, 186 USPQ 436, 445 (2nd cir. 1975); HMH Publishing Co., Inc. v. Brincat, 504 F.2d 713, 183 USPQ 141 (9th Cir. 1974).

11. Any doubts or close questions are to be resolved against defendants as late-comers who have acted at their own peril in knowingly adopting marks so similar to those of the Olympic Committee. E.g., American Home Products Corp. v. Johnson ChemiCal Co., 589 F.2d 103, 200 USPQ 417 (2nd Cir. 1928); Fotomat v. Cochran, Inc., 437 F.Supp. 1213, 194 USPQ 128 (D.C. Kan. 1977); General Foods Corp. v. Borden Inc., 191 USPQ 674 (N.D. Ill. 1976).

12. Adoption and use by defendants of the marks of interlocking rings displayed with "U.S.A." with full knowledge and awareness of the Olympic Committee's marks, as well as the expressed concern and confusion of defendant Federated Department Stores, among others, when coupled with the defendants' complete freedom to choose any marks, establishes that defendants intended to trade upon the goodwill of the Olympic Committee and of the Olympics. E.g., Stork Restaurant v. Sahati, 166 F.2d 348, 76 USPQ 374 (9th Cir. 1948), Southland Corp. v. Schumbert, 297 F. Supp. 477, 160 USPQ 375 (S.D. Cal. 1968). Indeed, the defendants bear the burden of proving alternative reasons for selection of such similar marks. E.g., Glamorene Products Corp. v. Boyle-Midway, Inc., 188 USPQ 145 (S.D.N.Y. 1975).

13. The infringement of the defendants was willful. Defendants were unjustly enriched by their acts which deliberately appropriated to themselves plaintiff's goodwill. Throughout the period of defendants' sales and marketing activities, they had knowledge of the Olympic Committee's rights. "Whether [they] believed [themselves] to be within the law or not, [they were] knowingly and deliberately cashing in upon the goodwill of the [Olympic Committee]. This is such an infringement as will justify an accounting of profits." Wolfe v. National Lead Co., 272 F.2d 867, 123 USPQ 574, 576 (9th Cir. 1959), cert. den. 362 U.S. 95, 125 USPQ 668.

14. Even if defendants were laboring under a mistaken view of the law that there was no infringement, they nevertheless adopted their marks "for the purpose of taking advantage of the aura of goodwill wich surrounded" the Olymypic designations. Thus an accounting is an appropriate remedy. Maier Brewing Co. supra, Fleischman Distilling Corp., supra. Where the infringement is deliberate and willful, even if the products are non-competitive, both the trademark owner and the buying public are slighted, if the court provides no greater remedy than an injunction. Playboy Enterprises v. Baccarat Clothing Inc., No. 82-5010, 216 USPQ 1083 (9th Cir., Nov. 22, 1982).

15. An accounting of profits should be awarded as a deterrent against future infringements. As the court said in Admiral Corp. v. Price Vacuum Stores, Inc., 141 F. Supp. 596, 801, 109 USPQ 451, 455 (E.D. Pa. 1956).

> It seems scarcely equitable * * * for an infringer to reap the benefits of a trademark he has stolen, force the registrant to the expense and delay of litigation, and then escape payment of damages on the theory that the registration suffered no loss. To impose on the infringer nothing more serious than injunction when he is caught is a tacit invitation to other infringement.

This position was followed by the Ninth Circuit in its economic analysis of the necessity of imposing economic disincentives on infringers, in Playboy Enterprises v. Baccarat Clothing, Inc., supra. In holding failure to award an accounting was an abuse of discretion under the facts of that case, the court observed that an award of only nominal damages could not adequately serve "as a deterrent to future infringing activities." It is, therefore, "essential that the trial courts carefully fashion remedies which will take all the economic incentive out of trademark infringement."

Federal Trademark Act Remedies

A. Plaintiff is Entitled to Injunctive Relief

16. Defendant's continued use of infringing designations will cause irreparable harm to plaintiff. Thus plaintiff is entitled to a permanent injunction, as set forth in this court's previous orders.

B. *Plaintiff is Entitled to Recover Its Damages*

17. Plaintiff is entitled to recover all damages sustained by the wrongful acts of defendants, which amount should be trebled because of the willful nature of defendants' conduct. 15 U.S.C. § 1117. Plaintiff, however, has not attempted to show evidence of damages aside from the statutory measure of defendants' profits.

C. *Plaintiff Should Be Awarded An Accounting of Defendants' Profits*

18. An accounting of an infringer's profits should be granted if the infringer is unjustly enriched, if the trademark owner sustained damages from the infringement, or if an accounting is necessary as a deterrent to future infringements. W. E. Basset Co. v. Revelon, Inc., 435 F.2d 656, 664, 168 USPQ (—— 2nd Cir. 1970). Monsanto Chemical Co. v. Perfect Fit Products Mfg. Co.,

349 F.2d 489, 146 USPQ 512 (2nd Cir. 1965); Maier Brewing Co. v. Fleischman Distilling Corp., 390 F.2d 147, 157 USPQ 76 (9th Cir.), cert. den. 391 U.S. 966, 157 USPQ 720 (1968); Matuna Corp. v. Cawy Bottling Co., Inc., 613 F.2d 582, 205 USPQ 489 (5th Cir. 1980); Truck Equipment Service Co. v. Freuhauf Corp., 536 F.2d 1210, 191 USPQ 79 (8th Cir. 1976).

19. Defendant's wrongful profits may be measured prima facie by establishing the amount of sales. The burden then shifts to the infringer to prove its operating costs. (15 U.S.C. § 1117).

20. Defendants' wrongful profits also may be measured alternatively by the amount of money that would have been charged by plaintiff for the authorized association of goods in the categories of defendants' goods, since this is the amount which defendants, by their infringement, have saved. Deering, Milliken & Co. v. Gilbert, 269 F.2d 191, 122 USPQ 355 (2d Cir. 1959).

D. *Plaintiff is Entitled to Recover Its Attorneys' Fees*

21. In view of the willful infringement by defendants, as well as having required plaintiff to go to considerable expense to protect its statutory rights despite the failure to put forth a credible defense, this is an exceptional case within the meaning of 15 U.S.C. § 1117 as incorporated by the Amateur Sports Act of 1978 (36 U.S.C. § 380(a)) and plaintiff is entitled to recover from the defendants its costs and attorneys fees incurred in prosecuting this action.

[EXHIBIT A TO WADDELL DECLARATION]

[See *ante* p. 310]

TRIUMPH IN 86

Vol. 1 No. 1

[THREE-RING LOGOS]

A TRIBUTE TO GAY GAMES I
THE PROMISE OF TRIUMPH '86
GAY GAMES II

* * * *

The Logo

The Overlapping Circles:

* * * *

January 1984

* * * *

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* * * *

Editorial

THE PROMISE OF '86

IT IS NOW FOURTEEN MONTHS SINCE Gay Games I and our recovery from them is nearly complete. We are ready to begin plans for Gay Games II in 1986.

There is much to be said about the first Games, but if you were there then you know how inadequate words and pictures would be in describing what we all saw and felt.

Here in our first sound since Gay Games I, we present you with the commemorative first issue of our new magazine which we call "TRIUMPH". In it you will find pictures and words in tribute to our historic moment together, but more important, you will find the promise of Gay Games II in 1986. They will be held once more, and for the last time in the foreseeable future, in San Francisco.

Our decision to host them a second time comes from our desire to refine them and work out the "bugs" before they travel to other international sites. We wish to emphasize the same philosophy of participation in Gay Games I, as the hallmark of Gay Games II. Our goals remain the same: here is an opportunity for us to gather together from all over the world in a spirit of friendly competition.

In celebrating our togetherness in such a fashion, we choose cooperation rather than confrontation to establish our visibility and identity. In turn we create visual examples of how we hold ourselves and this serves to educate those who need to know us better.

As in Gay Games I, we will address the same issues that plague ALL communities: sexism, racism, and ageism. In addition we will continue to keep the Games open for all who wish to participate regardless of their ability or geography. The concept of the Games centers around the notion of inclusion rather than exclusion.

There are many new lesbian and gay sports festivals around the world where the competition is good and the spirit is high towards winning. But, once every four years the Gay Games will be the opportunity for everyone to be together at the same time to share and to play and to discover and to celebrate our accomplishments. May our cheers and tears of joy be noticed throughout the world.

So, we begin again. In many ways it will be more difficult the second time because now there will be expectations that did not exist for Gay Games I. Please be mindful that we need support from everyone. Help us and yourself to make "TRIUMPH" IN '86 unforgettable.

Dr. Tom Waddell

* * * *

THE "OLD" BOARD AND ITS MANDATE

IT'S ALL HISTORY FOLKS! THE FIRST Gay Games were an astounding success in terms of establishing credibility of international athletics for lesbians and gay men. It was perpetrated by a small band of die-hard visionaries and volunteers. Without their dedication to that task, the Games would still be struggling as an idea. But they did it! And now we all reap the benefits of those incredible experiences. Congratulations to the *"Old Board"*, you have etched your names in our history in a way that can only be described in the most positive and enlightening ways.

* * * *

Twin Cities to Host 1986 Lesbian/Gay Winter Olympic Games

A FULL COMPLEMENT OF EVENTS IS BEING offered in Minneapolis/St. Paul for the First Lesbian/Gay Winter Olympic Games in 1986.

Organizers of the event are in the process of preparing Twin Cities for the enormous undertaking and welcome inquiries to the competitive and associated cultural events.

For further information, please write to:

ML/GC-IGOA
West Seventh Neighborhood Center
900 Albion St.
St. Paul, Minnesota 55116

* * * *

OPENING CEREMONIES MORE THAN A DREAM

* * * *

And then the athletes.

No one was quite prepared for the monitors in blue Gay Games I shirts and white pants carrying signs from 12 countries, 27 states and 179 cities and towns with a seemingly endless procession of 1300 women and men in their colorful team uniforms.

* * * *

Acting Mayor Doris Ward welcomed the guests to the Gay "Olympic" Games. The late Congressman Phil Burton issued a warning to the United States Olympic Committee and then presented a congressional award to the Games organizers. Games Chairman Dr. Tom Waddell confirmed that this was the beginning—and it was.

The athletes then crowded around the stage to watch and listen to Tina Turner do a stunning 45 minutes of what she does best to the dancing delight of everyone in the stadium.

Then the athletes, monitors, and flag corps took positions on the field in the form of a giant gauntlet. They all settled to one knee and suddenly Meg Christian began singing the haunting Gay Games official anthem "Reach for the Sky" to an upbeat accompaniment. As she sang,

two former Olympic stars, Susan McGrievy and George Frenn, entered the west gate carrying the torch which had made its way across country from Stonewall in New York City, carried by more than 200 gay women and men.

The torch bearers ascended the flame plinth and as Meg finished with a crescendo, they lighted the flame signifying the start of the First Gay Games.

• • • •

Gay Games International Advisory Committee to be Formed

THE GAY GAMES MOVEMENT IS IN rapid evolution from a somewhat amorphous festival to a significant event in all our lives every four years. This vast potential for global unity and its consequent social impact cannot be fully realized without the emergence and participation of leaders with the qualities of courage, vision and integrity, within the international gay community. It is crucial that future Games reflect the consensus of such leaders concerning the ideology and objectives of the Games.

Future Gay Games should also reflect a broad base of agreement about such issues as events to be held, procedures for choosing host cities, and criteria for selecting athletes beyond the traditional yardsticks of competitive success.

To facilitate the process of achieving global consensus about these questions, it is essential to set up an international committee whose members will provide valuable input on issues relevant to the future evolution of the Games.

In many cities throughout the world, leaders motivated and competent to participate in such a committee will already be known or identifiable. The Board of Di-

rectors of San Francisco Arts & Athletics welcomes a word of interest from such persons so that constructive dialogue can begin well in advance of the Opening Ceremonies of Gay Games II.

Please forward all correspondence on these matters to the

EXECUTIVE DIRECTOR
San Francisco Arts & Athletics, Inc.
890 Hayes St.
San Francisco, CA 94117
USA

• • • •

Dear Friends of
Gay Games II,

Now it is time to begin building our Triumph in '86. It is important that we have your support at this time, during the first development stage of a long, arduous project. Gay Games I were held at a cost of $400,000 and that included the volunteer work of hundreds and a phenomenal fund-raising effort, primarily at the local level. Gay Games II will have a budget that is magnitudes larger.

Our Board of Directors for Gay Games II has raised the initial $25,000 start-up budget among ourselves—now we have to turn to our total community—nationally and internationally—for the financial support needed for Gay Games II.

All of us who believe in the beauty and magic of the Games can help by subscribing to our magazine and by making personal and business contributions. In addition we have launched a fundraising campaign in the form of a Sweepstakes. A $2 donation is requested for each ticket which offers a chance for the remarkable prize of:

TWO (2) $200 Seats for
Los Angeles Games 1984
Opening Ceremonies, July 28th

—plus—

Roundtrip Airfare for 2

—plus—

Accommodations in LA for 2

We come to you for your support and we hope you will respond—generously. The Games will once again be a mighty showcase of our collective self-esteem. With you joining us we will achieve our goal of TRIUMPH in '86.

Board of Directors
Gay Games II

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[EXHIBIT B TO WADDELL DECLARATION]

[See *ante* p. 311]

[Logo with three rings omitted in printing]

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